Neutral Citation Number: 2022/DHC/004763

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

Judgment reserved on: 01.11.2022.

% Judgment delivered on: 09.11.2022.

\+ **W.P.(C) 7245/2003**

SURESH KUMAR ..... Petitioner

Through: Mr. Anil Singal, Advocate.

versus

CP & ORS. ..... Respondents

Through: Mr. Nitesh Kumar Singh and Ms.Laavanya Kaushik, Advocates for Mrs. Avnish Ahlawat, Standing Counsel for Respondent No.1.
Mr. Naushad Ahmed Khan, Advocate for Respondents.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petition is arising out of an order dated 26.08.2022 passed by the Ld. Central Administration Tribunal (hereinafter referred to as "CAT") in O. A. No. 2635/ 2002 decided on 07.08.2003.

2. The undisputed facts of the case reveal that the Petitioner before this Court was an employee serving on the post of Head Constable in the services of Delhi Police, and was posted at Terminal 2 of the Indira Gandhi

International (IGI) Airport, and on 24.03.1996, the Deputy Commissioner of Police (DCP)/ IGI Airport conducted a surprise visit from 03:30 Hours to 04:00 Hours and was informed that ASI Jagmal Singh and Head Constable Suresh Kumar who were checking Passports of passengers were collecting money from the passengers and, in those circumstances, a search was carried out by the DCP/IGI Airport at 0405 Hours on 24.03.1996. It is an admitted fact that from the pocket of the Petitioner Head Constable Suresh Kumar, 75 Dirhams were recovered and ASI Jagmal Singh was also present on duty at the same point of time.

3. The facts further reveal that based upon the aforesaid incident, a seizure memo was prepared. Recovered amount was deposited in Malkhana of PS/IGI Airport, Delhi, and an action was initiated under the Delhi Police (Punishment and Appeal) Rules, 1990 (hereinafter referred to as "the Rules") read with Section 21 of the Delhi Police Act, 1978.

4. A joint enquiry was ordered in the matter against ASI Jagmal Singh and Head Constable Suresh Kumar – the present Petitioner. The summary of allegations leveled against the Petitioner are reproduced as under:

> *"You ASI Jagmal Singh, 3096/D and HC Suresh Kumar, 220/A when detailed at Arrival Exit, Gate Shift "B" NITC Airport on the night intervening 23/24.3.96, were checked by DCP/IGI Airport during his surprise visit at Terminal-II from 3.30 hrs. to 4.00 hrs. Your activities were suspicious and were found checking passports of selected persons. Besides, on questioning passengers, passing/exiting through that gate, it was confirmed that police officials at that gate were extorting and taking money. At 4.05 hrs., DCP/IGI Airport, Delhi searched the pockets of HC Suresh Kumar No.220/A and 75 Dirhams (5x5 + 5x10 Dirhams) were recovered from the left side pocket of his*

> *pant whereas ASI Jagmal Singh 3096/D was also present at that time at the same point of duty. The seizure memo, was prepared and the recovered amount was deposited in Malkhana PS IGI Airport, Delhi. The above act of ASI Jagmal Singh, 3096/D and HC Suresh Kumar, 220/A amounts to gross-misconduct of indulging into corrupt practice in discharge of their official duties which renders them liable for departmental action in accordance with DP (P&A) Rules-1980 as envisaged under Section 21 of DP Act, 1978.*"

5. An Enquiry Officer was appointed in the matter and after meticulous examination of the witnesses, it was held that the charges stood established. Finally an order was passed on 20.09.1999 by the Disciplinary Authority dismissing the Petitioner as well as ASI Jagmal Singh from service.

6. An Appeal was preferred in the matter and the Commissioner of Police by an order dated 26.08.2002 dismissed the Appeal by a detailed and exhaustive speaking order.

7. The Petitioner being aggrieved by the order of punishment dated 20.09.1999 and the order passed by the Disciplinary Authority dated 26.08.2002 preferred an Original Application being O.A. No. 2635/2002 before the Ld. CAT. The Ld. CAT vide order dated 07.08.2002 has dismissed the Original Application. Paragraphs 6 to 10 of the order passed by the Ld. CAT dismissing the O.A. read as under:

> *"6. Confronted with that position, the learned counsel for the applicant had highlighted that it was a case of no evidence. He also argued that the inquiry officer had not examined any of those passengers and on the sole testimony of the concerned Deputy Commissioner of Police, the findings have been so arrived at. Resultantly, the same deserve to quashed.*

*7. We know from a decision of the Supreme Court in the case of **Bank of India & Anr. v. Degala Suryanarayana**, JT 1999 (4) SC 489 that scope for interference in disciplinary proceedings while judicially reviewing the same is limited. The I findings recorded by the disciplinary authority would be ordinarily immune from interference unless it is case of no evidence or no reasonable person can come to such a finding. The Supreme Court in the facts of that case held that the High Court clearly exceeded the bounds of power of judicial review available to it while exercising writ Jurisdiction over a departmental disciplinary enquiry proceeding.*

*8. The learned counsel for the applicant relied upon a decision of the Supreme Court in the case Of **Hardwari Lai v. State of U.P.** and others, (1999) 8 SCC 582. In the cited case, Hardwari Lal was Police Constable. He was charged of having abused his colleague while he was under the influence of liquor. In the enquiry that ensued neither the complainant nor the other employee who accompanied the said person was examined. The Supreme Court held that it was a case of no evidence. Similarly reliance was further placed on a decision of this Tribunal in the case of **Lalit Prasad v. Govt.of HCT of Delhi and Others** in OA No.1693/2000 rendered on 11.7.2001. Herein also the assertion was the same that the relevant material witness had not been examined. Thus Tribunal on appreciation of the facts of the case concluded that the order would not withstand scrutiny.*

9. There is indeed no controversy that can be raised pertaining to the said plea. If material witnesses had not been examined, necessarily, the effect would be not favourable to the department. However while scrutinizing the same, the facts of each case cannot be ignored and they take pre-dominance. In the present case in hand, to insist that those passengers who were due to leave the country for certain destinations must also have been examined would be improper. At the relevant time, certain passengers were passing through the gate. The applicant is alleged to be extorting some amount from them. The departmental enquiry is not like a criminal trial where

proof beyond reasonable doubt is required. The findings can be arrived at on preponderance of probabilities. The complainant happened to be the Deputy Commissioner of Police at the Indira Gandhi International Airport. He had conducted surprise check. He himself had seen that the applicant was checking the passports of the selected passengers and acting suspiciously. On inquiry, it was found that he was extorting money and on personal check, 75 Dirhams were recovered from him. To state that the money recovered from the applicant belonged to someone else would be an afterthought and cannot be believed. What was witnessed by the Deputy Commissioner of Police who had appeared as a witness and was the complainant was supported by the abovesaid facts. In that view of the matter, the defence was rightly rejected that it cannot be termed that it was case where there was no evidence on the record. Therefore, it would be improper for this Tribunal to interfere.

10. For these reasons, the present application being without merit must fail and is dismissed. No costs."

8. The present Writ Petition has been filed challenging the Order of Commissioner of Police, the Disciplinary Authority and the order passed by the Ld. Central Administrative Tribunal.

9. Learned Counsel for the Petitioner has vehemently argued before this Court that the present case is a case where no evidence has been adduced. There was no evidence of demanding and accepting bribe, and in absence of an eyewitness to the demand and acceptance of a bribe, and absence of evidence from the person from whom the money was allegedly extorted, it cannot be said that any misconduct occurred at the behest of the Petitioner. It was a case of no evidence, and the findings arrived at by the Enquiry Officer are perverse findings. Therefore, the order passed the Disciplinary

Authority, the Appellate Authority as well as the Ld. CAT deserves to be set aside. Accordingly, the Petitioner is entitled to be reinstated back in service.

10. The Petitioner has also argued before this Court that the most material witness in the present case was the person from whom the money was allegedly extorted. If the person who has been allegedly extorted has not been called by the Enquiry Officer, the entire procedure adopted in the matter is bad in law.

11. Learned Counsel for the Petitioner has also drawn the attention of this Court towards the statements of DW-2 and DW-3. It has been stated that the statements of defence witnesses have not been looked into, and, therefore, the findings arrived at by the Enquiry Officer are perverse findings. Thus, Petitioner is entitled to reinstatement with back wages.

12. It has also been argued by the Petitioner before this Court that the Enquiry Officer has cross-examined PW-3, and, therefore, the cross-examination by the Enquiry Officer is impermissible in law. Therefore, the findings stand vitiated.

13. This Court has taken into account all the grounds raised by the Petitioner and by no stretch of imagination can it be said that the present case is a case of no evidence. It is an undisputed fact that 75 Dirhams were recovered from the Petitioner at the time when the search took place and the Petitioner was certainly not a traveler who came from some foreign country, thereby being in possession of Dirhams.

14. The Police Official who is present at the Airport to check the travelers was found with foreign currency and no satisfactory explanation was provided by him for possession of the same at the time of search and seizure. The Enquiry Report is on record and the statements of PW-1, PW-2 and PW-3 are reproduced as under:

> "***PW-1 Insp. R.C. Garg:***
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> *He deposed that on 24.3.96, he was posted as Insp./Vigilance at NITC Airport. At about 4.00 hrs. on 24.3.96, DCP/IGI Airport, Sh. Rajesh Kumar called him outside the arrival exit and told that the ASI and HC posted at arrival exit gate were checking the passports of selected passengers and extorting money from them. The DCP/IGI Airport had also told him that he had made quarries from some passengers who told him that policemen were taking money at the exit gage. At about, 4.50 hrs. the DCP/IGI Airport himself took the search of HC Suresh Kumar No.220/A and 75 Dirhams were recovered from the left side pocket of his trouser. He (PW) prepared the seizure memo of the recovered foreign currency on which he (PW). ASI Jagmal Singh and HC Suresh Kumar signed which is Exh. PW-1/A. the ASI and HC were placed under suspension on the orders of DCP/IGI Airport, NITC/Shift "B" was lodged to this effect, which is Exh. PW-1/B. The foreign currency i.e. 75 Dirhams, recovered from the possession of HC Suresh Kumar were deposited in the Malkhana of PS IGI Airport vide DD No.4 dt.25.3.96 which is Ex.h. PW-1/C.*
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> *On cross-examination by delinquents the PW deposed that he did not remember as to who was sent to call him by the DCP/IGI Airport. He had information of extortion by policemen 2/4 days earlier and he was verifying it. No one signal o the seizure memo as witness and he prepared the same in his office in the presence of both the delinquents. Place of occurrence was at a distance of 60/70' yards from office and DCP/IGI Airport had gone when he prepared the seizure memo, he was not with DCP/IGI Airport while the DCP/questioned the*

passengers but the personal search of the HC was taken in his presence. The DCP/IGI Airport also took the personal search of other policemen present there but nothing was recovered from them. The ASI and HC were present inside the exit gate at right and left side respectively. He did not know as to which country's currency the Dirhams were.

PW-2, Insp. Jagdish Yadav, D/2020

He deposed that on 24.3.96, he was posted as I/C Control Room Shift "B" IGI Airport, ASI Jagmal Singh and HC Suresh Kumar were detailed for duty at arrival exit gate as per the fortnight duty roster. At about 4 hrs on 24.3.96, the DCP/IGI Airport visited the airport and took the personal search of staff posted at arrival exit gate. Thereafter the DCP/IGI Airport directed Insp./Vig. R.C. Garg to complete further formalities who wrote down suspension report of both the officers i.e. ASI Jagmal Singh and HC Suresh Kumar.

On cross-examination by the delinquents, he deposed that on that night the entry gate was closed and when the employees/staff of airport were entering the building through the exit gate, their passes were being checked. In case of emergency, passengers were also allowed to enter by showing their travel documents. The delinquents were detailed in proper uniform and with Identity Cards. He did net know the exact time of reliving of delinquents from their duties but they were relieved half and hour after the incident.

PW-3 Sh. Rajesh Kumar the then DCP/IGI Airport

He deposed that during March. 1996, he was posted as DCP/'i<K Airport. On the night of 23/24.3.96, he made a surprise check at arrival exit gate and saw that two policemen were checking the passports of some passengers and were extorting money from them. He made enquiries from the passengers who told him that policemen on duty were taking money. He called for the Insp./Vig. And searched the police personal on duty. Both the policemen who were seen accosting the passengers and were keeping the money in their pockets,

identified as ASI Jagmal Singh and HO Suresh Kumar. On taking their personal search, foreign currency i.e. 75 Dirhams were recovered from HC Suresh Kumar's pocket. He directed Insp./Vig. To seize the money and deposit it with the PS IGI Airport.

During cross-examination, he deposed that the search was carried out in the presence of Insp./Vig. Initially the HC was search and subsequently the ASI. Seizure memo was prepared only for the recovered currency fro the possession of HC after watching for half an hour, be observed record this in Roznamcha and also to prepare seizure memo, which was not signed by him (PW). The HC taking money and the money was recovered from the possession of HC I the presence of Insp./Vig. Who prepared the seizure memo, entry from arrival exit gate for the staff of airport is not allowed but if someone enters, he will be given entry only, after proper checking.

On further cross-examination by the EG, he deposed that the HC was taking money from the passengers after checking their documents in the presence of the ASI whereas the police personnel are not supposed to check the documents at arrival exit gate. The ASI was standing nearby and was ushering the passengers towards the HC. The ASI and HC were checking the documents of very selected passengers to the ASI, he simply ushered him towards the HC."

15. The aforesaid statements of the witnesses make it very clear that based upon certain allegations regarding extortion of money, a surprise check was carried out and 75 Dirhams were recovered from the Petitioner.

16. It is nobody's case that the Enquiry Officer has acted as a prosecutor and the Ld. Tribunal has certainly considered the grounds raised by the Petitioner. The Ld. Tribunal has rightly held that Rule 16V of the Rules empower the Enquiry Officer to frame questions which he wishes to put to the witnesses in order to clear ambiguities.

17. In the present case, the Enquiry Officer has not even suggested leading questions as argued before this Court. Further in a Departmental Enquiry, misconduct has to be proved on the basis of preponderance of probability.

18. The present case is certainly not a case of no evidence. It is an open and shut case, wherein, a Head Constable was found with 75 Dirhams. He was posted on a very sensitive duty, to check the passports of passengers. Possession of foreign currency in his pocket at the time of a surprise check read with statements of other witnesses clearly establishes the misconduct committed by him.

19. It has also been argued before this Court that the punishment levied is extensively harsh and disproportionate to the guilt of the delinquent.

20. In the present case, this Court is dealing with Police personnel who is supposed to be the custodian of law and whose duty is to ensure that people are following the law of the land. If such a person himself breaks the law, he has to be dealt with iron hands, and, therefore, in the considered opinion of this Court no other punishment except dismissal could have been inflicted upon him in the facts and circumstances of the case. Therefore, this Court does not find any reason to interfere with the order passed by the Ld. CAT.

21. The Hon'ble Supreme Court in the case of ***R. Mahalingam v. T.N. Public Service Commission,*** (2013) 14 SCC 379, has provided guidance on the scope of judicial interference in matters challenging disciplinary action. The Hon'ble Supreme Court in the aforesaid case, in paragraph 11 has held as under: -

> *"11. We have heard the learned counsel for the parties. The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the disciplinary authority to impose the particular punishment except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the court."*

22. The Hon'ble Supreme Court in the case of ***Apparel Export Promotion Council Vs. A.K. Chopra,*** (1999) 1 SCC 759, in paragraphs 16 & 17 has held as under:

> *"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High*

Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141 HL] observed:

> *"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court."*

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been

> *arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."*

23. The Hon'ble Supreme Court has held that in exercise of review jurisdiction, normally, there should be no interference with the factual findings in a departmental enquiry unless the Court finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/ or legally untenable.

24. The Hon'ble Supreme Court in the case of ***State of A.P. Vs. S. Sree Rama Rao,*** (1964) 3 SCR 25, in paragraph 7 has held as under:

> *"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition I ... under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ*

under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

25. In the aforesaid case, the scope of judicial scrutiny has been looked into by the Hon'ble Supreme Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

26. The Hon'ble Supreme Court in the case of ***Union of India Vs. P. Gunasekaran,*** (2015) 2 SCC 610, in paragraphs 12 & 13 has held as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India,

shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

27. The Hon'ble Supreme Court in the case of ***State of Karnataka Vs. N. Gangaraj,*** (2020) 3 SCC423, has taken into account the earlier judgments delivered on the subject and has reiterated that the scope of interference in departmental enquiry is quite limited. Interference in disciplinary proceedings can be done in case there is violation of principles of natural justice and fairplay or if the findings arrived at are based on no evidence/ perverse findings.

28. In light of the aforesaid judgments and in absence of any procedural irregularity or violation of principle of natural justice and fair play, this Court does not find any reason to interfere with the order passed by the Disciplinary Authority, the Appellate Authority as well as the order passed by the CAT.

29. The Writ Petition stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

NOVEMBER 09, 2022
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