

Central Administrative Tribunal, Principal Bench

Original Application No.2968 of 2002

New Delhi, this the 1st day of August, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member(A)

Const. Harminder Singh
No. 1204/ND
S/o late Shri Malkiat Singh
R/o 1/2235, Ram Nagar,
Mandoli Road Shahdara,
Delhi-32

.... Applicant

(By Advocate: Shri Ashwani Bhardwaj)

Versus

1. Commissioner of Police,
Police Head Quarter
Indraprastha Estate
New Delhi

2. Joint Commissioner of Police,
New Delhi Range
Police Head Quarter
Indraprastha Estate
New Delhi

3. Dy. Commissioner of Police,
New Delhi Distt.,
Police Head Quarter
Indraprastha Estate
New Delhi

.... Respondents

(By Advocate: Mrs. P.K. Gupta)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant is a Constable in Delhi Police. He faced departmental proceedings and the assertions against him, to begin with, were:

"A complaint was received from the residents of Nangla Machi through Shri Raghubir Singh Kapoor r/o 1178, Dev Ram Park, Tri Nagar, Delhi in Vigilance Branch, PHQ, Delhi. It was alleged in the complaint that ASI Sube Singh No.1533/ND then posted in Special Staff, PS Parliament Street had falsely implicated Shri Nishar Ahmed in a criminal case. It was also alleged that when the ASI did not find any illegal things against Shri Nishar Ahmed, he put his Jhuggi on fire with his subordinates i.e. Const. Phool Singh and Const. Harminder Singh No.1095/ND. The police party

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comprising of above said ASI and constables took away Nishar Ahmed to P.S. Parliament Street although nothing was found from him. ASI Sube Singh accepted Rs.2000/- from Smt. Shakeela Begum w/o Nishar Ahmed in the presence of Parbhoo Dayal and others on the pretext that he would release her husband. The said money was arranged by Smt. Shakeela Begum after mortgaging her ornaments."

2. The enquiry officer recorded the evidence and thereupon, on appreciation of the same, concluded that so far as acceptance of Rs.2000/- from Smt. Shakeela Begum is concerned, that fact is not established. However, pertaining to the charge falsely implicating Nishar Ahmed, the findings returned were against the applicant and we take liberty in reproducing the said portion of the findings:

"Regarding the other charge of falsely implicating Nishar Ahmed (PW-1) in a case u/s 25/54/59 Arms Act, from the examination of star witnesses it appears as if Nishar Ahmed was picked up by the police on 7.7.91, otherwise there was no other reason for the relations/residents to go to PS, Parliament Street on this day. Nishar Ahmed was picked up and detained in the office of Special Staff, PS Parliament Street. At last, in a huff, Nishar Ahmed was falsely booked u/s 25/54/59 Arms Act and 5 TADA Act. In all there were four witnesses to the recovery of firearm from Nishar Ahmed. Of these two policemen had supported the version of prosecution in the Court but for absence of any D.D. Entry regarding their departure with ASI Sube Singh, the whole case becomes doubtful. The other two PWs have (public witnesses) filed affidavit in the Court showing their ignorance about the recovery of weapon from Nishar Ahmed and therefore contradicted the police version. It appears they were initially managed by the defaulter police officials to cover their misdeeds. On top of it, there is no previous record of Nishar Ahmed a fact which also belies the theory of the police as there is no supporting evidence which could speak against his otherwise good character. All in all, I do not draw any other conclusion except to find all the three delinquents guilty of the charge levelled against them."

3. The disciplinary authority accepted the said findings and imposed a penalty of withholding of one year

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approved service for a period of one year. The applicant preferred an appeal. The appellate authority reduced the penalty to censure and disposed of the appeal in this regard.

4. Learned counsel for the applicant had argued that there was no material against the applicant vis-a-vis the findings that he was instrumental in falsely implicating Nishar Ahmed in a false case punishable under Section 25 of the Arms Act.

5. We do not dispute the proposition that if there is no material against a person, in that event this Tribunal would be competent to look into the evidence and interfere. However if there is any material or on preponderance of probabilities, the findings arrived at by the concerned authorities could be supported, this Tribunal will not sit as a court of appeal and thereupon interfere in the said findings. Even if on appreciation of evidence, the Tribunal intends or feels that the findings cannot be supported, the scope of interference in judicial review would be negligible.

6. What is the position herein? The witnesses examined did not name the applicant to be the person instrumental in taking away Nishar Ahmed from his Jhuggi and subsequently implication. There is no overtact on the part of the applicant indicated or read to us in evidence to come to such a conclusion. In fact the appellate authority while deciding the appeal filed by the applicant

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also was conscious of this fact and recorded:

"Only one PW i.e. Nisar Ahmed who was arrested in the Arms Act case had deposed that ASI Sube Singh and Ct. Phool Singh, whom he identified during DE, had implicated him falsely in Arms Act case. The other witnesses did not name any police official but they only stated that 4/5 policemen took away Nisar Ahmed from his jhuggi. Since during the DE, the involvement of ASI Sube Singh and Ct. Phool Singh is established, the appeal of Ct. Phool Singh No.1201/ND is rejected. However, since Ct. Harminder Singh's involvement is not indicated by any witness, he cannot be held guilty for wrongful apprehension. However, since his departure alongwith two remains unrebutted, he remains at fault to that extent and I take a lenient view and modify the punishment of forfeiture of one year approved service for a period of one year permanently awarded to Const. Harminder Singh, No.1204/ND by the disciplinary authority, to that of Censure. The period of dismissal of Ct. Harminder Singh, No.1204/ND i.e. from 8.5.1992 to the date of joining of the department i.e. 16.7.98 has already been correctly decided by the disciplinary authority as dies non on the principle of "No work No pay" and there is no scope to modify this part of punishment. However, his suspension period from 16.7.98 to 19.8.99 is decided as period spent on duty for all intents and purposes."

7. Once it had come in findings that there is no evidence against the applicant with respect to the charge for which he has been held guilty, question of taking a lenient view or awarding a penalty of censure will not have the sanction of law. The appellate authority, as we have already indicated above, was aware of the fact that there was no witness who made any averment against the applicant for apprehending Nishar Ahmed wrongly and subsequently implication in the case referred to above. In that view of the matter, there is no escape but only to hold that it was a matter of no evidence against the applicant. The findings, therefore, of the disciplinary and the appellate

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authority cannot be sustained..

8. For these reasons, we quash the impugned order holding that it is a case of no evidence. O.A. is disposed of.

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Naik

(S.K. Naik)

Member(A)

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(V.S. Aggarwal)

Chairman

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