Central Administrative Tribunal, Principal Bench

43

O.A. No.629/2002
With
O.A. No. 1377/2002

New Delhi, this the 3rd day of July, 2008

Hon'ble Mr. Justice V.K. Bali, Chairman
Hon'ble Mr.L.K. Joshi, Vice Chairman (A)

O.A. 629/2002

Shriniwas ....Applicant

(By Advocate: Shri N. Safaya)

versus

Commissioner of Police and others ....Respondents

(By Advocate: Shri Ram Kanwar)

O.A. 1377/2002

Davinder Kumar ....Applicant

(By Advocate: Shri Sachin Chauhan)

versus

UOI and others ....Respondents

(By Advocate: Shri Ram Kanwar)

1. To be referred to the Reporters or not ? yes.

2. To be circulated to other Benches of the Tribunal or not ? X

(L.K. Joshi)
Vice Chairman (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.629/2002
With
O.A. No.1377/2002

New Delhi this the 3rd day of July, 2008

Hon'ble Mr. Justice V.K. Bali, Chairman
Hon'ble Mr. L.K. Joshi, Vice-Chairman (A)

OA No.629/2002

Shriniwas,
Son of Shri Mange Ram,
R/o 25/478, Ashok Nagar,
Near Power House, Bahadurgarh,
Haryana. -Applicant

(By Advocate: Shri N. Safaya)

Versus

1. The Commissioner of Police,
Police Headquarter,
I.P. Estate, New Delhi.

2. The Joint Commissioner of Police,
(Southern Range), I.P. Estate,
New Delhi.

3. The Additional Dy. Commissioner of Police-I,
(South District), Police Head Quarter,
I.P. Estate, New Delhi.

4. Shri Jagdev Singh, E.O.,
D.E. Cell,
C/o Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi. -Respondents

(By Advocate: Shri Ram Kanwar)

O.A. No.1377/2002

Davinder Kumar
S/o Shri Thakerya,
R/o Vill & P.O- Bakhtawarpur Garhi,
Police Station-Ali Pur,
Delhi. -Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. Joint Commissioner of Police,
Southern Range,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.

3. Addl. Dy. Commissioner of Police/Ist
South, District, New Delhi. -Respondents

(By Advocate: Shri Ram Kanwar)

ORDER

Mr. L.K. Joshi, Vice-Chairman (A)

As a common question of law is involved based on identical facts, we are dealing with both the Original Applications by this common judgment.

2. A joint departmental enquiry was initiated against the Applicants, the ground for which is stated in the common summary of allegation served on both the Applicants, which is extracted below:-

"SUMMARY OF ALLEGATION

It is alleged against you Const: Sriniwas No.2356/SD and Const Devender Singh No 1670/SD that on 6/1/94 at 7 AM while you were posted at P.P Okhla Head PS S.N. Puri you both have visited the residence of Sh. Ali Akhtar S/o Muhd Ali R/o H.No.929 Gali No. 14, Zakir Nagar, Okhla, New Delhi and took away Rs.6,89,000/- Kept in the steel Almirah on the pretext that he is in possession of some unlicenced arms. Both of you also threatened him to implicate in some serious Crml. Case if the matter is reported to the police. But the matter was reported to the police by Sri. Ali Akhtar and Case FIR No. 13 Dt 9.1.94 U/s 384/34 IPC PS. S.N. Puri was registered on his complaint and investigation was marked to SI Pargat Singh of Vig. Branch South Distt. Delhi.

Investigation revealed that both the Consts. namely Davender Singh No 1670/SD & Sriniwas No. 2356/SD are involved in this Case. Hence Const Sriniwas No. 2356/SD and Devender Singh No. 1670/SD were arrested in this case on 12.1.94 and 14.1.94 respectively. During the course of investigation Rs 1,00,000 and Rs 1,10,000/- were recovered by the IO SI. Pargat Singh from the residences of you const.

(46)

Sriniwas No.2356/SD and Davender Singh No. 1670/SD at your instance respectively. As such, total amount Rs 2,10,000/- was recovered. The extortion of Rs. 6,89,000/- by you both of the constables is highly deplorable and unbecoming of police officer.

You Consts. Sri Niwas No.2356/SD and Davender Kumar No. 1670/SD remained in Judicial Custody from 13.1.94 to 17.3.94 and 15.1.94 to 17.3.94 respectively.

The above acts on the part of you const Sri Niwas No. 2356/SD and Ct. Davender Singh No. 1670/SD amounts to gross misconducts and unbecoming of police officer which render you both of the consts. liable for the departmental action punishable U/S 21 of the Delhi Police Act 1978.

Sd/-
(UDAI VIR SINGH RATHI)
EO
SHO/Mehrauli
South Distt.
New Delhi".

A criminal case was also instituted against the Applicants by FIR Number 13/94 under Sections 394, 34, 452 of IPC. The Applicants filed separate OAs i.e. OA number 1821/1994 by Shri Shriniwas and OA number 60/1995 by Shri Davinder Kumar before this Tribunal. The said OAs were disposed off by judgment dated 20.04.1995 and 10.05.1995 respectively on the undertaking of the Respondents that the disciplinary authority would finalise the departmental proceedings against the respondents only after the decision in the criminal trial. The enquiry officer submitted his findings on 28.09.1998. Meanwhile, the Court acquitted the Applicants in the criminal trial by judgment dated 26.04.2000. The disciplinary authority gave personal hearing to the Applicants on 10.06.2000 and by his order dated 14.06.2000 inflicted the punishment of dismissal on the Applicants. The Applicants carried appeals to the Joint Commissioner of Police, the appellate authority, who rejected the appeals by a common order dated 16.01.2002. Both the Applicants filed OAs before this Tribunal, challenging the aforesaid

47

orders, i.e. OA number 629/2002 by Shri Shriniwas and OA number 1377/2002 by Shri Davinder Kumar. OA Number 629/2002 filed by Shri Shriniwas was allowed by judgment dated 13.03.2003, following which OA Number 1377/2002 of Shri Davinder Kumar was also allowed. The Respondents filed writ petitions numbers 5097/2003 and 5095/2003 before the Honourable Delhi High Court, which were withdrawn by Court order dated 13.08.2003 for filing review applications before the Tribunal. The review applications number 364/2003 and 14/2004 were also dismissed by judgments dated 17.12.2003 and 20.01.2004. The Respondents again challenged the judgments of the Tribunal before the Honourable Delhi High Court in Writ Petitions (C) 763-66/2004.

3. The Tribunal had allowed the OAs, filed against the order of dismissal of the Applicants on the ground that following the judicial acquittal of the Applicants, there were no grounds available to the department under Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, which carves out five exceptions, including acquittal on technical grounds, in which departmental proceedings can be initiated against the delinquent officials. The Honourable Delhi High Court, in its judgment dated 28.03.2008 in the aforesaid Writ Petitions held that the acquittal of the Applicants in the criminal case was only on technical grounds and, therefore, they could have been proceeded against departmentally under Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980. The case was remanded back to the Tribunal for disposal of OA Number 629/2002 and OA Number 1377/2002 on merits.

4. The contentions raised by the learned counsel for ~~which~~ Shri Shriniwas, Applicant in OA No.629/2002 are manifold. The complainants Ali Akhtar and Asrar Ahmad, the material witnesses in the

departmental enquiry have not been examined. Indeed, the enquiry officer has recorded his observations in his findings thus:

> "I have examined the DE file carefully and found that only two police PWs could be examined by the then EOs while two Public Witnesses i.e. complainants i,e. Sh. Ali Akhtar and Asrar Ahmed and one police witness i.e. SI (Rtd.) Sh. Pargat Singh, the then IO of the criminal case FIR 13/94 u/s 384/34-IPC, have not been examined and these three witnesses are material witnesses. All the three PWs have been summoned several times but only one Police PW i.e. Sh. Pargat Singh Rtd. SI, the then IO of the said case could be examined while about two public witnesses, report of the process server is on record that the two public witnesses (complainants) have gone abroad i.e. Saudi Arbia – Gulf Country and are expected to return India after 2 years. Their contract of service may increase. The report of process server dt. 22.10.97 received on 12.11.97 is placed on record. However, the statement of Police PW i.e. SI (Rtd.) Pargat Singh, the then IO of the case could not be recorded for want of the presence of the two defaulter on 3.11.97."

The retired SI, Pargat Singh was examined later on in the presence of the charged officers. He has stated in his cross-examination that the statement of complainants could be attested by the Officer in-charge of Police Post Okhla Head who had initially recorded the statement on 8.01.1994. The said Inspector, in-charge of Police Post Okhla Head, Shri Narendra Chawla was later examined as Court witness. This witness has stated that he recorded the statements of both the complainants Ali Akhtar and Asrar Ahmad and he had attested these after the complainants had signed these. It has been argued that the statement of the witness is not factually correct as is evidenced by the fact that the exhibits CWI/A and CWI/B, the statements of the complainant are in different handwriting. We have gone through the original record of the departmental enquiry, which was produced by the learned counsel for the Respondents, and find that this indeed is correct. The handwriting in both the documents are so distinctively different that there cannot be

any manner of doubt that these have been recorded by two different persons.

5. The learned counsel for the Applicant in OA No.629/2002 has also urged strenuously that Shri Narender Chawla has wrongly been called as Court witness. The argument is that he should have been called as original witness for prosecution because Court witness, under Rule 16 (viii) of Delhi Police (Punishment & Appeal) Rules 1980 can only be called for clarifying issues and not for introducing fresh evidence. Rule 16 (viii) of the Delhi Police (Punishment and Appeal) Rules, 1980 reads thus:

> "16. (viii) After the defence evidence has been recorded and after the accused officer has submitted his final statements, the Enquiry Officer may examine any other witness to be called "Court witness" whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross-examine all such witnesses and then to make supplementary final defence statement, if any, in case he so desires".

The Court witness has not been cited in the list of witnesses and the conclusion of the enquiry officer is based on the evidence of the Court witness.

6. Yet another argument raised on behalf of the Applicant Shri Shriniwas (OA No.629/2002) is that the amount of Rs.1,10,000/- recovered from the Applicant was returned by the Court of Metropolitan Magistrate to Shri Mange Ram, father of the Applicant. This order of the learned Metropolitan Magistrate has not been challenged by the Respondents.

7. Shri Sachin Chauhan, learned counsel for Shri Davinder Kumar, Applicant in OA 1377/2002 has contended that the case of the Respondents is based merely on recovery of Rs.70,000/- from the Applicant's father-in-law and Rs.30,000/- from the Applicant. The PW-1,

HC Kishan Lal has stated in his cross-examination by the Charged Officer Davinder Kumar that according to the entry made at serial number 1652/94 in the register at Malkhana "Rs.70,000/- was recovered from Village Bhagwan Nagar, Children Park, near DMS Booth while as per entry made at Sl. No. 1665/94, Rs.30,000/- was recovered from the house of you Ct. Devender Singh from your house Bhakhtawarpur, Delhi". He would further contend that the Applicant has not been named by the complainants in their statements at Ex. CW1/A and CW1/B. The complainant Shri Ali Akhtar has only stated that he recognized Constable Shri Sriniwas who came to his house along with another uniformed person and a person who was not wearing any uniform. There is no evidence against the Applicant except that Rs.30,000/- was recovered from him. He would also contend that there is nothing in the judgment dated 26.04.2000 of the learned Metropolitan Magistrate to suggest that the Applicant was even remotely connected with the incident of robbery about which complaint had been made by Shri Ali Akhtar and Shri Asrar Ahmed.

8. The Respondents have contested the claim of the Applicant and filed counter affidavit stoutly defending the action against the Applicants. The grounds for taking action as mentioned in the order of the disciplinary authority have been reiterated.

9. We have meticulously gone through the documents placed before us with the assistance of the counsel and bestowed our careful attention to the contentions of the counsel for the parties.

10. It had not been possible to examine the complainants in this case because both of them had reportedly gone overseas at the time of the departmental enquiry. Rule 15 (3) provides that the statements in the

preliminary enquiry of the witnesses who are not available could be taken on record after supplying a copy of the same to the Charged Officer. Rule 15 (3) is reproduced below :

> "15.(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer."

11. The statements of the complainants have been produced as exhibits CW1/A and CW1/B as supposed to have been recorded by the court witness Inspector Narender Chawla, Police Post Okhla Head. However, as we have noted in paragraph 4 above, it is clear that the complaints of the two complainants have not been recorded by the same person. The complaints have been recorded in different hands, although the court witness Shri Narender Chawla has stated that he had recorded the complaints of both the complainants and have attested after they had signed the documents. We have no doubt that no reliance can be placed on the documents at exhibits CW1/A and CW1/B, complaints of the two complainants, in view of what has been stated above. In the absence of the complainants, therefore, the allegation against the Applicants cannot be substantiated. We would like to reiterate, at the cost of repetition, that the allegations against the Applicants cannot be substantiated on the basis of the aforesaid documents namely the complaints alleged to have been recorded by the court witness, Shri Narender Chawla in his hand. The OAs would succeed only on this ground and we do not feel it

(52)

necessary to discuss other arguments advanced by the learned counsel for the Applicants.

12. On the basis of above discussion, the OAs succeed. The impugned orders of the disciplinary authority and the appellate authority inflicting the punishment of dismissal on the Applicants and rejecting their appeals respectively are quashed and set aside. The Applicants will be reinstated in service forthwith. They will be eligible for all consequential benefits except back wages. The above directions should be complied with within a period of three months from the date of receipt of a certified copy of this order. No costs.

(L.K. Joshi)
Vice Chairman (A)

(V.K. Bali)
Chairman

/dkm/