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Central Administrative Tribunal  
Principal Bench

O.A. No. 1839 of 2002

New Delhi, dated this the 18<sup>th</sup> September, 2002

HON'BLE MR. M.P. SINGH, MEMBER (A)  
HON'BLE MR. SHANKER RAJU, MEMBER (J)

1. Bhagirath (Constable)  
No.687/ND,  
S/o Shri Matadin,  
R/o 2/53, Mangolpuri,  
Delhi

2. Mast Ram (Constable)  
No.565/ND,  
Bairek No.6,  
Parliament Street,  
New Delhi-I

... Applicants.

(By Advocate: Shri V.K.Sharma)

Versus

1. Union of India  
through  
Secretary,  
Ministry of defence,  
Research and Development Organisation,  
Defence Institution of Fire Research,  
Brick SK Mazammudar Road,  
Delhi.

2. State of Delhi,  
through its Law Secretary,  
Sham Nath Marg,  
New Delhi.

3. Commissioner of Delhi Police,  
ITO,  
New Delhi

... Respondents.

ORDER

Shanker Raju, Member (J)

Applicants, Constables in Delhi Police, have impugned punishment order dated 29.9.99 imposing upon them penalty of withholding of next two increments for two years without cumulative effect and the period of suspension was treated as not spent on duty. The applicants have also assailed the

appellate authority's order dated 3.3.2000 rejecting their appeals preferred against the order of Disciplinary Authority.

2. Briefly stated, a complaint was made by Mr. Khalid Kamal regarding harassment while they were on a vehicle near Vijay Chowk, meted out to him and his wife by the applicants. A test identification parade was conducted at P.S.Tughlak Road where the applicants were identified. SHO (Inspector Indira Sharma) sent her inquiry report to the ACP and thereafter the applicants were placed under suspension.

3. A copy of summary of allegations was served upon the applicants and they had been proceeded in a joint inquiry. During the course of inquiry, 8 prosecution witnesses were examined and a charge was framed for against the applicant for harassing and threatening the complainant and his wife. Applicants produced 11 defence witnesses in defence and also filed a joint statement in defence.

4. The Inquiry Officer in his findings held the applicants guilty of the charge which had been agreed upon by the Disciplinary Authority resulting in major punishment which has been upheld by the Appellate Authority, giving rise to the present OA.

5. It is also contended that the Disciplinary Authority as well as the Appellate Authority had not gone to the contentions of the applicants and passed perverse orders. He further alleges malice towards

Inspector Indira Sharma, SHO, on the ground that earlier on account of death of the father of one of the applicants, she refused to accord leave and the applicants proceeded without any permission. This, according to applicants, led them to face the present inquiry by falsely implicating the applicants.

6. Shri Sharma has also drawn our attention to the discrepancies regarding place and time of the incident mentioned in the complaint filed by Mr. Khalid Kamal and has also stated that in the Test Identification Parade only two persons were put for identification which is unknown procedure. It is stated that the applicant was checked by the CO and at the relevant time he was found at some other place and he was not present at the spot and was held guilty with a view to take revenge at the behest of Inspector Indira Sharma, SHO.

7. It is also stated that the defence evidence has not been meticulously discussed by the Inquiry Officer and if the same had been discussed by the Inquiry Officer, the applicants would have been exonerated in the inquiry.

8. We have carefully considered the rival contentions of the parties and have perused the material on record.

9. In the disciplinary proceedings, it is not open for the Tribunal to go into the correctness or truthfulness of the charges and also to reappraise

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the evidence and the principle adopted in inquiry is preponderance of probabilities and strict rules are not to be followed and if the findings are based on some evidence, the same cannot not be interfered with in any eventuality. This has been held in several pronouncements of the Apex Court including Kuldip Singh Vs. Commissioner of Police & Ors. (JT 1998(8) SC 603).

10. We find that one Khalid Kamal, who visited Vijay Chowk on 5.6.98 along with his wife on being harassed by two Constables of Delhi Police, reported the matter and recorded their grievance in the register maintained at P.S. Tughlak Road. In the earlier complaint, the names of the applicants were not figured but later on when an inquiry was conducted by Inspector Smt. Indira Sharma and a Test Identification parade was conducted and the applicants were identified by the prosecution witnesses in the parade as the persons who had harassed them and only then the names of the applicants were figured.

11. The other evidence on record also suggest and conclusively point out towards the guilt<sup>h</sup> of the applicants.

12. In our considered view, no educated person, unless he is so harassed, would report against the harassment of Police Officer to the police station. Once the complainant endeavoured to file his complainant and thereafter pursued it to the extent to visit the police station twice and identify

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the culprit applicants would leave no doubt about the veracity or authenticity of the complaint and merely because there was some discrepancies in the place of incident i.e. Vijay Chowk or India Gate or time would not <sup>lessen</sup> the misconduct of the applicants. It is proved from the evidence on record that the applicants were the culprits who were unnecessarily and without any justification in ~~excess~~ of their authority harassed the complainant and his wife and also harassed them to the extent of threatening of dire consequences.

13. In so far as posting is concerned, it is not disputed that the applicants were on patrolling duty and had performed the same and merely because they had been checked by the CO that would not be sufficient to aver that they were remained at a particular place. It was possible to escape from the place of duty to a nearby place Vijay Chowk and harass the complainant and his wife. The overwhelming evidence of PW1 and PW2 and the complainant whose testimony have not been impeached or dis-credited constitutes an evidence against the applicant for arriving at the applicants' guilt and impose punishment upon them.

14. In so far as the malafide is concerned, firstly the SHO was not made a party and secondly relevant materials have not been brought on record to establish the malafide. Merely because leave was refused and the applicant absented himself would not suffice to take a view against SHO Indira Sharma and as an Inspector holding a post of SHO she performed

her duties and entertained the complaint and conducted the inquiry which ultimately involved the real culprits. In the department enquiry the principle of preponderance of probability is adopted though strict procedure laid down in Cr.P.C for recording evidence is not to be applied.

15. From the angle of preponderance of probability, the Inquiry Officer on the basis of evidence had substantiated the charge which in a judicial review cannot be interfered with. We find that the findings of Inquiry Officer are based on positive material on record and the same are neither perverse nor are based on surmises and conjectures.

16. In so far as defence evidence is concerned, the Inquiry Officer considered the testimony of DW1 and also took into account the evidence produced by the applicants as well as the contentions taken by them in the defence and on that basis the Inquiry Officer concluded the inquiry which does not suffer from any illegality or infirmity.

17. From the perusal of the order, passed by the Disciplinary Authority, we find that all the contentions have been dealt with and the punishment imposed by the Disciplinary Authority is reasoned one which has been upheld by the Appellate Authority.

18. In the result, having regard to the reasons recorded above, we do not find any reason fit enough to interfere with the orders passed by the respondents. The OA is dismissed at the admission stage itself. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

M.P. Singh  
(M.P. Singh)  
Member (A)

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