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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.3036 OF 2002

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

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON BLE SHRI S.K. NAIK, MEMBER (A)

Bhawru Khan,
S/o Shri Umed Khan,
Constable No. 2418/PCR.
M.T./PCR.
Delhi.

... Applicant

(By Advocate : Shri M.S. Sasan)

Versus

1. Union of India
Through - Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Additional Commissioner of Police.
PCR & Communication,
Police Headquarters,
M.S.O. Building,
I.P. Estate, New Delhi-110 002.
3. Additional Deputy Commissioner of Police,
Police Control Room,
Police Headquarters,
M.S.O. Building,
I.P. Estate, New Delhi-110 002.
4. Inspector H.S. Bisht,
Inspr./Trg./PCR,
Through : Additional Commissioner of Police
Police Control Room,
Police Headquarters
M.S.O. Building, I.P. Estate,
New Delhi-110 002. ... Respondents

(By Advocate: Shri Ajay Gupta)

ORDER

JUSTICE V.S. AGGARWAL

Applicant is a Constable in Delhi Police. By virtue of the present application, he seeks setting aside of the orders passed by the disciplinary authority as well as the appellate authority whereby

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his pay was reduced by one stage from Rs.4030/- to Rs.3950/- in the time scale of pay for a period of one year with immediate effect. He was to earn increments of pay during the period of reduction and on the expiry of that period, the reduction was not to have the effect of postponing his future increments. His suspension period was decided as the period not spent on duty.

2. Some of the relevant facts are that it was alleged against the applicant that while he was posted at PAP, Delhi (presently known as Indira Gandhi International Airport), he engaged himself as an agent of M/s R.K.Enterprises who was holding a licence for recruiting Indian workers to send to Libya along with other associates. He used to collect Rs.14,500/- to Rs.15,000/- from the persons and assured them to manage the jobs for them in a leather factory in Libya. Certain persons were sent to Libya by Kuwait Airways. When they reached there, they were informed that they had been brought for religious fight (zihad). They were confined for two months in a military camp and were given military training. One day some persons managed in scaling over the wall and reached the Indian Embassy and reported the whole story to the officials of the Embassy.

3. The Crime Branch of Delhi Police registered a case against the accused persons and also

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the applicant. The applicant was arrested and later on released. He was suspended and later on reinstated. On basis of the said facts, departmental proceedings had been initiated against the applicant. A charge was framed on almost same lines adding that he did not obtain the permission of the competent authority while engaging himself as an agent of the M/s R.K.Enterprises nor informed the department about the source of his income from M/s R.K.Enterprises.

4. The inquiry officer concluded that although no civilian witness had come forward yet on going through the circumstances and statements recorded under Section 161 of Code of Criminal Procedure, the charge against the applicant stood established.

5. The disciplinary authority imposed the following penalty:-

"I have come to the conclusion that he remained on fault. But keeping in view of his 33 years long service clean record I, Dr.P.S.Bhushan, Addl.DCP/PCR, Delhi inclined to take a lenient view and hereby order that the pay of Const.Bhanwru Khan, No.2418/PCR is reduced by one stage from Rs.4030/- to Rs.3950/- P.M. in the time scale of pay for a period of one year with immediate effect. It is further directed that he will earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increment of pay."



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The appeal filed by the applicant was dismissed. The applicant assails the said orders.

6. The application has been contested by the respondents. The assertions made that there was no evidence against the applicant had been denied. It is contended that the departmental enquiry was entrusted to Inspector H.S.Bhist who completed the same in accordance with law. All aspects of the case were considered and there is thus no scope for interference.

7. The learned counsel for the applicant at the outset contended that he was tried along with others and the learned Additional Sessions Judge vide the order of 3.6.2000 had acquitted the applicant and, therefore, further departmental proceedings in this regard could not take place.

8. On careful consideration of the said facts, we have no hesitation in rejecting the said contention. A perusal of the order of the learned Additional Sessions Judge, Delhi indicates that the court had concluded that there was no proper sanction and it was on that ground that the said order was passed. In other words, the order passed by the learned Additional Sessions Judge was on technical grounds. Resultantly, the said order does not debar the department from proceeding against the applicant in departmental proceedings.

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9. In that event, it was urged that during the enquiry, there was no evidence against the applicant. The learned inquiry officer should not have read the statements recorded under Section 161 of the Code of Criminal Procedure against the applicant and if the same are ignored, in the absence of any evidence, the findings must be held to be based on no material on the record.

10. It is not in dispute that certain statements recorded of public witnesses had been brought on the record by the inquiry officer in this regard. The inquiry officer records specifically:-

"Efforts made to summon these 4 P.Ws may be perused as under:-

Sl. No	NAME & ADDRESS OF THE P.W	DATE ON WHICH CALLED TO ATTEND THE D.E.	MODE OF SUMMONS	REMARKS
1.	Mohd. Asgar, S/o Abdul Khan, Vill. Chhote Chappari, P.S. Didwana, Distt. Nagaur (Raj.)	29.3.2001	Through Spl. messenger Ct. Roopa Ram, 3429/ PCR	Not served as he was not available at his residence
		25.4.2001	Through Regd. AD	Received back un-delivered

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	28.5.2001	Through spl. messanger Ct. Naren- der singh, No. 1978/ PCR	Served but he did not attend the D.E.
2.	Murad Khan, s/o Nathu Khan, R/o Vill. Khakoli. via Tarapur, PS D.E. Molasar, Distt. Nagaur (Raj.)	29.3.2001	Through spl. Messenger Ct. Roopa Ram. 3429/ PCR
	25.4.2001	Through Regd. AD	No reply from the postal authority received
	28.5.2001	Through spl. Messenger Ct. Narend- er Singh, No. 1978/PCR	Served but he failed to attend the D.E.
3.	Mohd. Saleem, s/o Sher Mohd. R/o Tpt. Co. Ward No. 4 near Water Tanky. Didwana, Distt. Nagaur (Raj.)	29.3.2001	Through spl. messanger Ct. Roopa Ram, 3429/ PCR
	25.4.2001	Through Regd. A.D.	Acknowled- gement Received but he failed to attend the D.E.
	28.5.2001	Through spl. Messenger Ct. Narend- er Singh No. 1978/PCR	Served but he failed to attend the D.E.
4.	Hussain Khan, s/o Mehboob Khan R/o Dauser Vie Dhankoli, Distt. Nagaur (Raj.)	29.3.2001	Through spl. Messenger Ct. Roopa Ram. No. 3429/PCR
	25.4.2001	Through Regd. AD	Received back un-delivered

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28.5.2001 Through Not served
spl. as he had
Messenger gone to
Ct. Narend- foreign
er foreign country
Singh, No.
1978/PCR

6. Further from the statement of Insp. Ran Singh, who was I.O. of the case it came to light that in addition to above 4 P.Ws., he had recorded statements other P.Ws. residing in Rajasthan. Accordingly additional P.Ws. were made and list provided to the delinquent Const. Bhawru Khan, No. 2418/PCR on 8.6.2001.

Summons through Special Messenger i.e. Const. Narender Singh, No. 1978/PCR were issued to all the civilian P.Ws. residing in Rajasthan including the additional P.Ws. for joining the D.E. on 14.6.2001 but again none of the P.Ws. turned up as per the details given below:

<u>Sl. No.</u>	<u>Name of PW.</u>	<u>Date of Joining DE</u>	<u>Remarks</u>
1.	Murad Khan, S/o Nathu Khan, R/o Vill. Khakoli, Via Tarapur, P.S. Molasar, Disst. Nagaur (Raj.)	14.6.2001	Served but he failed to attend the D.E.
2.	Mohd. Saleem S/o Sher Mohd. R/o Tpt. Co. Ward No. 4, near water Tanky, Didwana, Distt. Nagaur (Raj.)	- do -	- do -

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3.	Mohd. Asgar S/o Abdu Khan. R/o Vill. Chhote Chhapari, P.S. Didwana, Distt. Nagaur (Raj.)	-do-	Unserved as he had gone to foreign country
4.	Hussain Khan, S/o Mehboob Khan, R/o Dausar via Dhankoli. Distt. Nagaur (Raj.)	14.6.2001	Unserved as he had gone to foreign country
5.	Ramjan Khan, S/o Sarju Khan. R/o Mohalla Kayam Khanion- Ka, Jaswant Garh, Distt. Nagaur (Raj.)	-do-	Not served due to not available at his residence
6.	Liyakat Ali, S/o Mukras Khan. R/o Mohalla Khanion Ka Jaswant Garh, Distt. Nagaur (Raj.)	-do-	Not served as he had gone to foreign country
7.	Abdul Aziz S/o Mohd. Ishaq, R/o Vill. Amarpura, Distt. Nagaur (Raj.)	-do-	Not served as no person by the name of Abdul Aziz is re- siding on the given address
8.	Taj Mohd. S/o Nazir Khan, Vill. Chhoti Chhapari P.S. Didwana, Distt. Nagaur, (Raj.)	-do-	Not served as he had gone to foreign country
9.	Abdul Majid, S/o Saleem Khan. R/o Sardarpura, P.S. Chhot Chhapri Distt. Nagaur (Raj.)	-do-	-do-
10.	Mohd. Yaqub S/o Azim Khan, R/o Chhoti	-do-	-do-

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Chhapri, P.S. Didwana
Distt. Nagaur (Raj.)

11.	Nazir Khan, S/o as Late Asat Ali Khan. R/o Villa, Jhardid, Distt. Nagaur (Raj.)	-do-	Not served the given address of the P.W. could not be traced
12.	Khan Mohd, S/o Kashru Khan, R/o Vill. Mawa, P.S. Bardua Distt. Nagaur (Raj.)	-do-	-do-
13.	Mohd. Akram, S/o Sher Mohd, R/o Chhapri Gate, Julahon Ki Pan Didwana, Distt. Nagaur (Raj.)	-do-	Not served as he has nothing to say in this D.E.

Const. Narender Singh, No. 1978/PCR who was detailed twice to serve the summons on the P.Ws. in Rajasthan reported that all the P.Ws. are labour type persons and work at different places away from their village."

In other words, efforts were being made to summon these witnesses but some were not traceable and the others did not appear and some had been reported to have gone abroad. Sub-rule (iii) to Rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, "the Rules") reads as under:-

"16. **Procedure in departmental enquiries -**
The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:

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(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record."

11. It permits the inquiry officer to bring recorded the earlier statements on record during investigation if the presence of the witnesses cannot be procured without undue delay, inconvenience or expense and the same had been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate. All these ingredients have been satisfied.

12. At this stage, we deem it necessary to mention that it was neither the plea nor urged that Rule 16(iii) of the Rules is invalid or ultra vires of

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the provisions of the Rules and, therefore, we deem it necessary to consider the same.

13. Once a statement had been permitted to be brought on record in accordance with the Rules, the same should be read in evidence and if it so taken, it cannot be termed that it was a matter which can be described to be one without evidence.

14. No other argument was advanced.

15. For these reasons, the application being without merit must fail and is accordingly dismissed. No costs.

Naik
(S.K.Naik)
MEMBER (A)

Agarwal
(V.S.Agarwal)
CHAIRMAN

/sns/