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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1970/2002

New Delhi, this the 11th day of August, 2003

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

Head Constable Ram Phool No.10046/DAP
R-1/75, Budh Vihar Phase I
Delhi-41

.. Applicant

(Shri Sachin Chauhan, Advocate)

versus

1. Secretary
Ministry of Home Affairs, New Delhi
2. Joint Commissioner of Police
Northern Range, Police Hqrs.
IP Estate, New Delhi
3. Addl. Dy. Commissioner of Police
North West District, PS Ashok Vihar
Delhi

.. Respondents

(Ms. Jasmine Ahmed, Advocate)

ORDER

S.K. Naik

By virtue of this OA, Head Constable Ram Phool assails the order dated 13.2.2001 passed by the Addl. Deputy Commissioner of Police, North West District imposing upon him the punishment of withholding of annual increments for a period of two years without cumulative effect, which when challenged was upheld by the appellate authority, the Joint Commissioner of Police, Northern Range, vide his order dated 18.4.2002. The charge based on which the departmental enquiry was ordered reads as under:

"I, Inspr. Satyavir Singh, DE Cell, New Delhi do hereby charge you, HC Ramphool, No.299/NW, that on 31.8.98, while posted in PS Saraswati Vihar, you were entrusted with a PCR call recorded vide DD No.4A. You visited the spot and brought three suspects to the Police Station alongwith one of the suspects to same unknown place, without any information and permission of senior officers and did not take any action. The two suspects remained sit unauthorisedly in your room for about 12 hrs. On coming to know about this fact, your absent was

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14

recorded by Inspr. R.N.Sharma vide DD No.10-A. Suspect Kanhaiya was in possession of a knife hence a case FIR No.566/98 u/s 25/54/59 Arms Act was registered against accused Kanhaiya by HC Ved Parkash and Rajiv Sharma was arrested by HC Sahansarpal u/s 41.2 Cr.P.C. You returned back on 1.9.98 vide DD No.38 and in this way due to your negligence the said suspects could not be put through sustained interrogation. Had the suspect been interrogated properly some cases would have been solved. The third suspect was allowed to escape and you even did not know his name & address etc.

The above act & conduct on the part of you amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of your official duties which renders you liable for action under the provision of Delhi Police (Punishment & Appeal) Rules, 1980, read with Section 21 of Delhi Police Act, 1978."

3. Counsel for the applicant during his submission has challenged the orders passed by the disciplinary authority as well as appellate authority on the following grounds:

- (i) that this is a case of no misconduct. The charge that the applicant visited the spot and brought three suspects to the police station has not been proved primarily on account of there being no evidence to that effect. In this connection, the counsel has referred to the statements of PW-1 HC Ved Prakash and PW-2 HC Sahansarpal. While the former had stated that accused Kanhaiya was apprehended by him alongwith Const. Ranbir Singh while on patrolling duty from near Wazirpur Depot, the latter had stated that he arrested the accused Rajiv Sharma from behind the bushes of park of H Block, Subzi Mandi Market, Shakurpur. On the basis of the statements of these PWs that they have

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(12)

arrested the accused from different places, it cannot be alleged that the applicant visited the spot and brought the suspects to the police station;

(ii) that in the instant case, EO has acted as Prosecutor which is legally not tenable. In this respect he has referred to the cross-examination of PWs by EO and has stated that cross-examination by no stretch of imagination could be termed as clarificatory in nature and therefore the proceedings stand vitiated;

(iii) that the appellate authority has relied on material extraneous to the proceedings before him, i.e. he referred to the vigilance enquiry which was not part of the charge against the applicant.

(iv) that the order of the disciplinary authority is vitiated on the ground that it is in violation of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980. According to the counsel, misconduct for which the applicant has been charged falls in the category⁴ cognizable offence in relation to the public but no prior approval of the Addl. Commissioner of Police has been taken before ordering the departmental enquiry as warranted under the aforesaid Rule.

4. The contentions raised by the counsel for the applicant have been contested. Respondents' counsel has referred to the statement made by PW-5 HC Randhir Singh who in his deposition has categorically stated that HC Ram Phool came to the spot from PS, Saraswati Vihar and

7
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16

was handed over three persons with knife apprehended by the traffic police staff to him. Similarly, PW-7 HC Bijender Singh has deposed to the effect that the applicant Ram Phool during the course of enquiry had confessed that the staff of PCR had handed over three boys namely Rajiv and Kanhaiya and the third one whose name was not known to him and he had further stated that he had brought them to the police station. The EO has discussed the statements of PW-1 and PW-2 on which counsel for the applicant has placed much reliance and on the face of the direct evidence that the accused persons were handed over ^{to and by} brought by the applicant, it cannot be ~~said~~ ^{be} stated that the proceedings either suffer from no evidence or that there was no misconduct on the part of applicant.

5. On the question of the enquiry officer resorting to cross-examination of PWs, the counsel has stated that the nature of cross-examination was only to find out the truth in the form of seeking clarification. It is provided under the Rules and therefore cannot be faulted.

6. In so far as reference to the vigilance enquiry is concerned, the counsel has objected to the same being taken up in argument as this is not a point raised in the pleas before the Tribunal as part of the OA. The counsel has stated that the enquiry officer has held the charge against the applicant to have been proved absolutely and the disciplinary authority and the appellate authority have, after due consideration of the full facts and circumstances and the evidence of the case before them, have passed detailed speaking orders. Punishment awarded

J. K. Singh

17

also is fully in consonance with the gravity of misconduct. He has further stated that the application is absolutely misconceived and deserves dismissal.

7. As regards the fourth contention that the departmental proceedings are vitiated for non-compliance of Rule 15(2) of the aforesaid Rules, the counsel for the respondents has contended that the necessity of obtaining prior approval of the Addl. CP is required only in case in which a preliminary enquiry is first conducted which discloses commission of cognizable offence. In the case under consideration the enquiry was of formal in nature and there was no need to obtain prior approval of Addl. CP.

8. We have considered the rival contentions of both the parties. At the outset, we would like to state that the function of the Tribunal is not to sit over a judgement as an appellate forum and re-assess the evidence unless malafide is alleged and/or that there has been absolutely no evidence relating to the charge. In this proposition we are fortified by the decision of the Supreme Court in the case of Govt. of Tamil Nadu Vs. A.Rajapandian AIR 1995 SC 561, in which it has been held as under:


"The Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority."

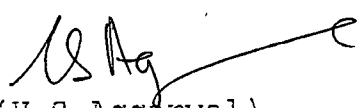
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order

9. It cannot also be stated that this is a case of no evidence. Attempt made by the applicant to make out a case that he was in no way connected with the incident of apprehending three accused persons has been discussed by the enquiry officer in his report based on the evidence before him and he has held the charge to be proved. On the point of reference to the vigilance enquiry, the same has to be ignored on the ground that no such plea has been taken by the applicant in his application filed before us. In so far as the application of Rule 15(2) of the aforesaid Rules, we find that in the absence of a preliminary enquiry, it was not incumbent for obtaining the prior approval of Addl. CP and therefore there is no question of the disciplinary proceedings being vitiated on that count.

10. The only point on which the counsel for applicant has laid much stress pertains to the cross-examination of PWs by the enquiry officer. In this respect, Rule 16(5) of the aforesaid Rules allows the enquiry officer to frame questions which he may wish to put to the witnesses to clear ambiguities or to test their veracity. As has been pointed out by the counsel for the respondents, the cross-examinations that have been made are in the nature of seeking clarification, with which we agree.

11. In view of what has been discussed above, we find no merit in the present OA and the same is accordingly dismissed. No costs.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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