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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1115 of 2001

New Delhi, this the 6th day of August, 2003

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

1. Ex.Constable Rishal Khan No.793/SD
S/o Shri Ishab Khan
R/o Village Aryuka
P.O. & P.S. Gopal Garh
Distt.Bharat Pur
Rajasthan.

2. Ex.Constable Ranbir Singh No.694/SD
S/o Shri Shiv Baksh
R/o Village Gauri Pur P.10- Katlana
P.S. & Distt. Bhiwani
Haryana ... Applicants

(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
P.S.Hauz Khas
New Delhi. ... Respondents

(By Advocate: Mrs.Jasmine Ahmed)

ORDER

JUSTICE V.S. AGGARWAL

The applicants were working as Constables in Delhi Police. The following charge was served on

(13)

them on 12.10.1999:-

"I, Surender Sharma, EO/Inspr. AATS/South Distt. New Delhi charge you, constable Ranbir Singh No.694/SD of gross misconduct, negligence and misuse of powers that on 26/9/98 at about 7.00 pm, a surveillance was conducted by the PRG staff comprising Inspt.Amarjeet Singh and others under the supervision of Sh.R.A.Sanjeev, ACP/PRG Cell (Traffic) on the traffic police. While in the way at police picket of Badarpur border, they noticed that two police personnel were indulging in illegal activities alongwith a public person. The activities at the picket were watched and finally PRG team reached the picket where a Jeep was being checked by you and constable Rishal Khan No.793/SD of PS Badarpur.

On enquiry, Sh.R.S.Katyal s/o Sh.B.D.Katyal r/o village Kanuri Jalalpur, PO: Sandalpur, Distt.Kanpur (UP) driver of Jeep No.MP-07/B-9003 handed over a yellow etching 'parchi' for Rs.40/- issued by Delhi Etching Authority given to him by Sh.Pradeep and stated that you have demanded Rs.300/- from him otherwise his vehicle will not be allowed to go. A search of both of you was carried out and Rs.100/- and Rs.250/- were found with you and const.Rishal Khan. When you were searched thoroughly an amount of Rs.1020/- was also recovered from you for which you could not give any account and were taken into possession through seizure memo. Rs.440/- were also recovered from Sh.Pradeep Kumar (public person) and taken into possession through seizure memo.

The aforesaid act on your part renders you liable to departmental action under Delhi Police (Punishment & Appeal) Rules, 1980."

The inquiry officer, on consideration of the material and the evidence before him, had returned the finding that the charge of demand of Rs.300/- from one Shri R.S.Katiyal could not be proved beyond doubt because the witnesses Shri R.S.Katiyal and Shri Dilshad Ahmed

resiled from their statements. Yet it was recorded that it was proved beyond doubt that on 26.9.1998 at 7.00 AM etching at the Badarpur border check post was being done by public person Pradeep Kumar with the connivance of the applicants. The disciplinary authority accepted the report of the inquiry officer and rejected the defence of the applicants. The said authority passed an order imposing a penalty of dismissal from service on both the applicants. The operative part of the order reads:-

> "The etching was being done just at the distance of 10/15 feet from this police check post. While there was no such verbal or written permission of any Sr.Officer for getting the etching done, I agree with the findings of the EO that it was being done with the tacit approval of both the defaulters. It is also a fact that a case FIR No.690 dated 26.9.98 u/s 420/468/471 IPC PS.Badarpur was registered in this regard which is pending trial in the Court of law in which the said Pradeep Kumar as well as both the defaulter Consts.are co-accused.
>
> Assessing all relevant aspects of the case and quantum of guilt so proved against the defaulters, I impose upon both the said defaulter Consts.Rishal Khan, No.793/SD and Ranbir Singh No.694/SD the penalty of dismissal from Govt.service as their act leaves them unreliable for Govt.duty. Their suspension period w.e.f.26.9.98 to date is treated as period not spent on duty."

An appeal was preferred which was dismissed by the Joint Commissioner of Police.

2. Earlier this Tribunal on 1.4.2002 had

disposed of the present application permitting passing of a fresh order by the appellate authority in accordance with the rules and instructions. Liberty was given to seek revival of the present application. The appeal again was dismissed. Resultantly vide the order passed on 22.7.2003, present application has been revived.

3. The relevant facts are that the applicants were enrolled in Delhi Police on different dates. While they were posted at Badarpur police picket, a surveillance raid was conducted by the P.R.G. staff on 26.9.1998 establishing that in connivance with one Pradeep Kumar, a public person, they were indulging in cheating and other similar acts. In this regard, FIR No.680/1998 with respect to offences punishable under Sections 420/468/471/120 was registered against the applicants and Pradeep Kumar. Departmental proceedings were also initiated further alleging that the applicants were indulging in illegal activities. They demanded money from one Shri R.S.Katiyal. An amount of Rs.1020 was recovered from Ranbir Singh and Rs.440/- from Pradeep Kumar. They had also allegedly seen doing etching work in connivance with Pradeep Kumar. It is on these broad facts that the abovesaid penalty had been imposed.

4. In the reply filed, the respondents while contesting the application pointed that the charge for

demand of Rs.300/- from Shri R.S.Katiyal was not proved because the public witnesses had resiled from their earlier statements, but it was proved that etching at Badarpur border check post was being done by a public person with the connivance of the applicants. Electric connection for etching was taken from the police picket. Certain amount was being charged by Pradeep Kumar without any authority. The penalty imposed in that view of the matter was justified.

5. The learned counsel for the applicant, at the outset, contended that the findings that have been arrived at are incorrect and, therefore, should be set aside. In this regard, the principles are well-settled and are not the subject matter of controversy. This Tribunal while judicially reviewing a decision that has been arrived at by the administrative authorities will not sit as a court of appeal and scrutinise the evidence. Even if for the sake of argument, the Tribunal was to come to a different conclusion, still it will not upset the findings if there was some material to prompt the administrative authorities on preponderance of probabilities to arrive at that finding.

6. In the present case before us, there was material with respect to which the charge has been shown to have established that Pradeep Kumar in

connivance with the applicants was doing etching work. The electric current was also being supplied from the police picket and the applicants were present there. We find no reason in this back-drop of facts to interfere.

7. Confronted with that position, the learned counsel for the applicants urged that the disciplinary authority imposed the penalty of dismissal upon the applicants and differed with the findings of the inquiry officer without serving any note of disagreement. In the absence of the same, the impugned order necessarily cannot withstand scrutiny.

8. We do not dispute the broad principles enunciated in the above plea that if the disciplinary authority has already taken a different view from the inquiry officer and thus differed in accordance with the settled principles, the same should communicate the tentative reasons of difference and call the explanation of the concerned official and thereupon on consideration of the same, pass the order. However, in the facts of the present case, as one peruses the record, the plea necessarily has to fail. We have already reproduced above the facts by extracting the relevant portions from the report of the inquiry officer and the order of the disciplinary authority. The inquiry officer had exonerated the applicant with respect to the main charge pertaining to demand of

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monetary benefits but only held them guilty with respect to the etching at Badarpur border which was being done by public person in their connivance. The disciplinary authority had agreed with the same. It had not recorded any separate findings in this regard. Therefore, it cannot be termed in the peculiar facts that the disciplinary authority had to record a note of disagreement and communicate it to the applicants. Necessarily when the present case is examined on its own facts, the broad principles of law referred to above will have no application.

9. The main submission of the learned counsel however, in this regard further was that herein preliminary enquiry had been held. As per the assertions, a cognizable offence was drawn. The prior approval of the Additional Commissioner of Police was not taken to start the disciplinary proceedings. In support of his argument, he referred to sub-rule (2) to Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, "the Rules").

10. To appreciate the same, we reproduce the provisions of sub-rule (2) to Rule 15 of the Rules which reads as under:-

> "15. **Preliminary enquiries.**- (2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after

obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

There is no doubt as one peruses the relevant rules that in case where the preliminary enquiry discloses the commission of a cognizable offence by a police officer in relations with the public, a departmental enquiry can only be started with the prior approval of the Additional Commissioner of Police as to whether the criminal case has to be registered or a departmental enquiry is to be held.

11. The learned counsel for the applicants had produced a few orders passed by this Tribunal in some earlier applications. In the case of **Bachi Singh v. Union of India and Others** in OA No.474/1989 decided on 6.12.1990, Bachi Singh was a Head Constable. Departmental proceedings had been initiated against him for gross misconduct unbecoming of a Government servant for being under the influence of liquor. The disciplinary authority had imposed a penalty. Sub-rule (2) to Rule 15 had been referred to by this Tribunal. This Tribunal had quashed the impugned penalty and recorded that it has to be remembered that the criminal proceedings were only with respect to Sections 91 to 93 of the Delhi Police Act. It was therefore, not a cognizable offence in his official relations with the public. Consequently, the decision therein is clearly distinguishable

because sub-rule (2) to Rule 15 of the Rule will not be attracted in the facts of that case.

12. Reliance further was placed on a decision of this Tribunal in the case of **Mohd.Usman** v. **Union of India and Others** in OA No.796/2000 decided on 25.5.2001. The facts therein were that the departmental proceedings were initiated against Mohd.Usman on the allegation of grave misconduct. No approval of the Additional Commissioner of Police had been taken and consequently though a First Information Report had been registered with respect to offences punishable under Section 201 of the Indian Penal Code, this Tribunal quashed the proceedings. The question considered by this Tribunal was not as to what would be the position when both the remedies are being availed of. The ratio deci dendi of the said decision would not apply to the facts of this case.

13. More close to the facts of the present case is the decision of this Tribunal in the case of **Ex.Constable Anil Kumar** v. **Union of India & Ors.** in OA No.659/1998 rendered on 9.11.2000. The question which has been agitated before us was considered and it was held that when both the proceedings are being continued sub-rule (2) to Rule 15 of the Rules would

not be attracted. It was held:-

"Rule 15 of the Rules deals with preliminary enquiries. Sub-rule (2) thereof prescribes that in cases in which a preliminary enquiry discloses the commission of a cognizable offence, a departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police as to whether a criminal case should be registered and investigated or a departmental enquiry should be held. In our view, aforesaid provision which deals with general enquiries will not be attracted in the present case as the present case pertains to escape of prisoners from police custody for which a special provision has been enacted and the same finds place in Rule 29 of the Rules. In the circumstances, it is not possible to accede to the contention of Shri Shanker Raju that the disciplinary proceedings suffer from an infirmity on account of want of approval of the Additional Commissioner of Police. Moreover, aforesaid sub-rule (2) of Rule 15, as we read it, does not bar both disciplinary proceedings being initiated as also a criminal prosecution being launched. All that the aforesaid rule lays down is that where both the courses are open, the Additional Commissioner of Police may decide which of the proceedings, whether a criminal case or a departmental enquiry should first be initiated. This, in our view, is the only construction which can be given to the aforesaid provision. We see no reason why one proceeding, if taken should necessarily exclude the other proceeding. That could never have been the intention of the legislature in enacting the said rule. If a preliminary enquiry does not disclose the commission of a cognizable offence, there can arise no question of launching a prosecution. All that can be done is to initiate a preliminary enquiry. However, in case the preliminary enquiry discloses the commission of a cognizable offence, the question arises as to whether the delinquent is to be prosecuted in a criminal case or he has to be proceeded departmentally or both, and whether on facts arising in each individual case, it would be appropriate to first initiate departmental proceedings which would entail the requirement of the delinquent to disclose his defence which may or may not, depending on the facts of each individual case, prejudice his defence in the criminal trial. A high

> ranking officer of the rank of Additional Commissioner of Police has been entrusted with the function and duty to decide whether a criminal trial should first be initiated or whether disciplinary proceedings can be conducted even prior to the delinquent being charged in a criminal trial. Aforesaid provision, in our viw does not admit of a construction that one proceeding excludes the other. The said provision, on the other hand, contemplates two proceedings, one departmental and the other criminal prosecution. All that the provision ordains is that the Additional Commissioner of Police will decide which proceeding should be initiated first and which at a later stage."

We find ourselves in agreement with the said view point because the plain language of the Rules has to be given its grammatical meaning. Sub-rule (2) to Rule 15 of the Rules clearly indicates that if departmental proceedings only have to be started, prior approval of the Additional Commissioner of Police is required after the preliminary enquiry had disclosed the commission of a cognizable offence. This is so because the Rules contemplate "whether a criminal case should be registered and investigated or a departmental enquiry should be held". If both the proceedings are to be done simultaneously, in that event, the rigour of sub-rule (2) to Rule 15 will not be attracted. We have, therefore, no hesitation in rejecting the said argument.

14. The last submission of the learned counsel further was that the punishment is disproportionate to the alleged dereliction of duty.

15. In the case of **State of India and Ors. v. Samarendra Kishore Endow and Another**, (1994) 2 SCC 537, the Supreme Court provided the guide-lines that in judicial review, the question of penalty awarded is not to be interfered with, but if the punishment is too excessive, the proper course is to send the matter to the disciplinary authority to impose the appropriate punishment. The Supreme Court held:-

> "14. Now, coming to the facts of this case it would appear that the main charge against the respondent is putting forward a false claim for reimbursement of expenditure incurred for transporting his belongings from Phek to Amarpur. So far as charge 5 is concerned there is no finding that the account become irregular or that any loss was incurred by the bank on account of the irregularity committed by the respondent. In the circumstances it may be that the punishment of removal imposed upon the respondent is harsh but this is a matter which the Disciplinary Authority or the Appellate Authority should consider and not the High Court or the Administrative Tribunal. In our opinion, the proper course to be adopted in such situations would be to send the matter either to the Disciplinary Authority or the Appellate Authority to impose appropriate punishment."

Similar were the findings recorded in the case of **B.C.Chaturvedi v. Union of India and Ors.**, JT 1995 (8) S.C.65. The Supreme Court held that if the punishment awarded is shockingly excessive, interference can be made by this Tribunal.

As Agree

15. In the present case, once the applicants have already been exonerated of the main charge, the only allegation against them was that they permitted the etching work to be done by a private person and they were conniving with him. This conclusion has been arrived at because the said public person was taking electric supply from the police picket. We are conscious of the fact that discipline has to be maintained in the police force and in a disciplined force, indiscipline has to be dealt with a firm hand, but we are of the considered opinion that for such a dereliction, dismissal or removal is a punishment disproportionate to the nature of the dereliction. It is in this back-drop that we quash the impugned order.

16. On merits while disposing the present application, we direct that the disciplinary authority may impose a punishment other than what has been referred to above. No costs.

(S.K.Naik)
MEMBER (A)

(V.S.Aggarwal)
CHAIRMAN

/sns/