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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1176 of 2001

New Delhi, this the 9th day of January, 2003

HON'BLE MR. V. K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Gaurav Aggarwal (D/1061)
S/o Shri Surender Kumar
R/o H.No. E-15, Gali No. 26-A,
Mollarband Extension,
Badarpur,
New Delhi-110 044.

-APPLICANT

(By Advocate: Shri Shyam Babu)

Versus

1. Government of NCT of Delhi,
Through its Chief Secretary,
5, Sham Nath Marg,
New Delhi.
2. Joint Commissioner of Police
(Southern Range)
Police Headquarters,
I.P. Estate,
New Delhi.

-RESPONDENTS

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant impugns order dated 15.2.2001 vide which his appeal against the order passed by the disciplinary authority awarding a punishment of dismissal from service had been considered by the appellate authority and the order of punishment has been modified to the extent that the punishment order was reduced to the effect that the punishment of forfeiture of 3 years approved service permanently entailing reduction in his pay by three stages from Rs.6200/- p.m. to Rs.5675/- for a period of three years. It was further ordered that the applicant will not earn his increments of pay during the period of reduction and it will have the effect of



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postponing his future increments of pay.

2. The facts, as alleged by the applicant in brief are, that the applicant was proceeded departmentally on the following allegations:-

" On the complaint of Mili Anand D/o Shri Jagdish Anand R/o C-77/D Kalkaji, New Delhi, a case vide FIR No.1145/98 u/s 420/406/495/3761.P.C. P.S. Kalkaji was registered against Anand Singh Latwal R/o A-319 Sector-J, Dr. Ambedkar Nagar, New Delhi. The investigation of the case was entrusted to you S.I. Gaurav Aggarwal D/1061 and you made efforts to trace the accused A.S. Latwal, but he could not be traced. On 16.1.98 another case vide FIR No.35/99 u/s 368 IPC was registered at P.S. Kalkaji on the complaint of Shri Jagdish Anand regarding kidnapping of his daughter Mili Anand by accused A.S. Latwal and 4 of his complices namely (i) Lovely Singh (ii) Gopal Rawat (iii) Avnish (iv) Anil Kumar. The investigation of this case also was entrusted to you SI Gaurav Aggarwal D/1061.

The said accomplice No.(iv) Mr. Anil Kumar S/o Shri Kashmir Singh R/o 3/26 Nehru Nagar New Delhi made a complaint that on 19.1.1999, your SI Gaurav Aggarwal along with you Ct. Naresh Vir No.699/SD visited his office and took him to P.S. Kalkaji. In the P.S. he was badly beaten up by both of you. And you SI Gaurav Aggarwal took him mobile phone and Rs.5000/- and further demanded Rs.5000/- from him to settle the matter. He was also detained in the P.S. on 19.1.999 from 12 noon to 11.30 P.M.

The above act on the part of you SI Gaurav Aggarwal D/1061 and you Ct. Naresh Vir 699/SD amounts to gross misconduct, negligence and dereliction of duty which renders you both liable for departmental action punishable under the provision of Delhi Police (Punishment & Appeal) Rules, 1980".

3. After enquiry, the following charge was framed:-

" 1. A.K. Singh ACP/GK, charge your SI Gaurav Agarwal D-1061 & your Constable Naresh Veer No.699/SD for your misconduct in the discharge of your official duty, on the complaint of Shri Anil Kumar S/o Shri Kashmir Singh R/o 3/26 Nehru Nagar Delhi, which alleges that on the complaint of Mili

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Anand D/o Shri Jagdish Anand R/o G-77/B Kalkaji a case vide FIR No.1145/98 u/s 420/406/495/376 IPC P.S. Kalkaji was registered against A.S. Latwal R/o A-319 Sector-1 Dr. Ambedkar Nagar, Delhi. The investigation of the case was entrusted to you SI Gaurav Agarwal D-1061, and you made futile efforts to trace the accused A.S. Latwal. On 16.1.1999 another case vide FIR No.35/99 u/s 368 IPC P.S. Kalkaji was registered on the complaint of Shri Jagdish Anand regarding kidnapping of his daughter Mili by accused A.S. Latwal and 4 of his associates namely (i) Lovely Singh (ii) Gopal (iii) Avnish and (iv) Anil Kumar. The investigation of this case too was entrusted to you SI Gaurav Agarwal D-1061.

The said accomplice no.(iv) Mr. Anil Kumar S/o Kashmir Singh r/o 3/26 Nehru Nagar, Delhi, made a complaint that on 19.1.1999 you SI Gaurav Agarwal No.D-1061 and you Const. Naresh Veer No.699/SD visited his office and took him to PS Kalkaji. In the PS he was badly beaten by both of you and you SI Gaurav Agarwal D-1061 forcibly took away his mobile phone and Rs.5000/- and demanded another Rs.5000/- from him to settle the matter. He was also detained illegally in the P.S. from 12.00 noon to 11.30 P.M.

The above act on part of you SI Gaurav Agarwal D-1061 and you Const. Naresh Veer No.699/SD amounts to gross misconduct, negligence and dereliction of duty which renders you both liable for departmental action under (Punishment & Appeal) Rules, 1980".

4. An enquiry was held. The Inquiry Officer held that the charges against the applicant are proved and the disciplinary authority after supplying copy of the enquiry report, conducted the proceedings in accordance with the law passed the order of dismissal from service.

5. In order to impugn the same the applicant submitted that in this case on the basis of a complaint a preliminary enquiry was held. The preliminary enquiry disclosed commission of cognizable offence committed by the applicant particularly with regard to extortion of money as defined under Section 383 of IPC and as per Rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980, the department should have placed the file before the



higher authority and sought the permission to initiate proceedings but the learned Additional DCP who is the disciplinary authority before placing the file to the higher authorities, i.e., the Commissioner of Police had initiated the proceedings himself in violation of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980.

6. Besides that the counsel for the applicant also submitted that the punishment awarded by the appellate authority whereby the applicant has been awarded reduction in his pay for a period of 3 years and also that he will not earn his increments during the period of reduction and it will have the effect of postponing his future increments is also violative of rules with regard to award of punishment.

7. In support of his contention the counsel for the applicant has referred to a judgment by a Co-ordinate Bench of this Court in OA 2126/2001 and also a judgment delivered by the Hon'ble High Court in CWP No.2368/2000.

8. In OA No.2126/2001 this Tribunal had observed that where Rule 15(2) was not complied with then the decision to initiate departmental enquiry in preference to criminal case has been taken by the DCP itself which is totally violative of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980. Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 is reproduced hereinbelow for ready reference:-

"15(2) In cases in which preliminary enquiry discloses the commission of a cognizable offence by a police officer of a 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".

9. The perusal of the same would show that in cases in which the preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank then it is essential for the disciplinary authority to seek prior approval of the Additional Commissioner of Police concerned to know whether a criminal case should be registered or a departmental enquiry should be held. PW5 Shri Durga Prasad, ACP who appeared as a witness before the Enquiry officer did depose that he had conducted a preliminary enquiry and submitted his report on 25.1.99 to Additional DCP. Thus conducting of a preliminary enquiry is established through PW5. The summary of allegations and the charges against the applicant further disclosed that, prima facie, there was a cognizable offence committed under Section 383 IPC. So there was no reason for the disciplinary authority to initiate departmental proceedings without seeking prior approval of the Additional Commissioner of Police or to get a criminal case registered and investigated or a departmental enquiry should be held. Since prior approval had not been obtained so we are of the considered opinion that Rule 15(2) has not been followed at all. Rather the initiation of departmental enquiry was in disobedience of Rule 15(2) than in compliance of the same.

10. As regards the punishment awarded by the appellate authority to the applicant is concerned, we find that the same is in accordance with law declared by the Hon'ble Delhi High overruling the Full Bench judgment

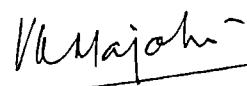
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in CWP No. 2368 of 2000 in Shakti Singh Vs. U.O.I. & Others so the punishment awarded to the applicant is not in accordance with the Delhi Police (Punishment & Appeal) Rules, 1980.

11. Hence, we are of the considered opinion that it is a fit case where the case should be remanded back to the disciplinary authority who may place it before the Additional Commissioner of Police in accordance with Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 and then the enquiry may proceed if the approval of the Additional Commissioner of Police is granted.

12. Accordingly, we hereby quash the impugned order dated 15.2.2001 rejecting the appeal of the applicant. The case is remanded back for placing it before the Additional Commissioner of Police in accordance with the rule and law on the subject who may take a decision within a period of period of 2 months, if so advised, from the stage of taking a decision whether to initiate a departmental enquiry in preference to registration of a criminal case or not. No costs.


 (GULDIP SINGH)
 MEMBER (J)


 (V.K. MAJOTRA)
 MEMBER(A)