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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1180/2001

This the 2nd day of February, 2003

Hon'ble Dr. A. Vedavalli, Member (J)
Hon'ble Sri Govindan S. Tampi, Member (A)

Sub-Inspector Shiv Kumar
S/o Shri Ram Partap, aged 36 years
Presently posted at I.G.I. Airport,
New Delhi
Residing at Qr.No.10, Type-III
New Police Colony, Shalimar Bagh,
Delhi

(By Advocate: Shri Sachin Chauhan)

...Applicant

Versus

1. Union of India
through its Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Lt. Governor of Delhi
5, Raj Niwas Marg,
Delhi
3. Commissioner of Police, Delhi
Police Headquarters, I.P.Estate
New Delhi
4. Joint Commissioner of Police
New Delhi Range
Police Headquarters, I.P.Estate
MSD Building, New Delhi
5. Dy. Commissioner of Police
East District
Delhi

(By Advocate: Ms. Jasmine Ahmed)

...Respondents

O R D E R

Sri Govindan S. Tampi:

Orders dated 22.4.1997, passed by the Dy. Commissioner of Police (Disciplinary Authority) dated 2.6.1998, passed by the Joint Commissioner of Police (Appellate Authority) of 16.5.1998, passed by the Commissioner of Police (Revisionary Authority) and dated 13.6.2000, passed by the Lt. Governor, are under challenge in this OA.

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2. Heard Shri Sachin Chauhan and Ms. Jasmine Ahmed, learned counsel for the applicant and the respondents.

3. The applicant, Shiv Kumar, SI along with Satender Singh, Head Constable were chargesheeted on 26.2.1996, following his suspension on 30.1.1996, for allegedly causing physical harm and injury to one Joginder Singh, who had visited Anand Vihar Police Station, on the night of 24/25.1.1996. This was done without obtaining the prior approval of the Addl. Commissioner of Police, though the commissions of a cognizable offence by the applicant was made out. Neither the preliminary inquiry report was given to him nor the officer, who conducted the said inquiry was cited as a witness. The applicant's request for change of inquiry officer was rejected. In the inquiry, the charges of illegal detention and assault was shown as proved. After examining all the facts and the applicants' representation, the Disciplinary Authority imposed on him the penalty of withholding one increment for three years, without cumulative effect and treated the period of suspension as not spent on duty. Following his appeal, the Appellate Authority proposed the enhancement of penalty to one of dismissal, but without considering the various pleas in the reply, enhanced the penalty to withholding of increments for three years without cumulative effect. His appeal to the Commissioner of Police and review petition before the Lt. Governor were also rejected in a mechanical manner. Interestingly, the Head Constable, who was chargesheeted along with him, was dealt with in a lenient manner. Hence this OA.

4. Grounds raised in this OA are that:

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- a) all the above orders were irregular and illegal;
- b) he was prejudiced as his request for change of inquiry officer was not permitted as shown in the Hon'ble Supreme Court's judgment in Indrani Bai Vs UOI 1994 SCC L&S 481,;
- c) rule 16(1) of the DP (A&A) Rules 1980 have been violated;
- d) inquiry officer had acted on the prosecutor and cross examined the applicant;
- d) preliminary inquiry report was relied upon, without bringing the concerned officer as witness, leading to the violation of rule 16(3) *ibid*;
- f) the applicant has been found guilty on extraneous consideration;
- g) the applicant has been discriminated in that Satendra Singh, his Co-defaulter has been exonerated on grounds of violation of principles of natural justice, while his penalty has been entanced;
- h) the applicant has been imposed multiple penalty violating rule 8(d)(2) of DP(PA) Rules,
- i) defence witnesses have not been believed;
- j) the enhancement of the penalty by the appellate authority was based on surmises and not on evidence and had been issued without considering his various pleas.

5. All the above points were fervently argued by Sh. Sachin Chauhan, learned counsel.

6. The pleas raised by the applicant are stoutly opposed by the respondents, in their pleadings and through the oral submissions by their learned counsel Smt. Jasmine Ahmed. After narrating the facts in the case, the respondents point out that at the end of the DE proceedings and after considering the representation of the applicant the disciplinary authority, imposed on him the penalty of withholding of one increment for three years without cumulative effect, while the Head Constable,

the co-defaulter whose role was secondary was given the penalty of withholding of one increment for one year. The appellate authority originally proposed enhancing the penalty to dismissal but on a lenient view, imposed the punishment of reduction in pay by seven stages for a period of three years without cumulative effect. Revisionary Authority and reviewing authority confirmed the above. It was true that the preliminary enquiry report was not given to the applicant, as it was not felt necessary as the summary of allegation have been given to him which explained the charge. It was also true that the applicant's request for change of inquiry officer was not agreed to as the plea was not based on any sound reason.

IO had correctly framed question and the same cannot be called as cross-examination. Disciplinary Authority had awarded the penalty correctly, and the lesser penalty awarded on the Head Constable was justified. As the illegal detention and assault on the complainant was proved, the Disciplinary authority had correctly penalised the applicant. The action of the Appellate authority, enhancing the penalty was also fully justified and he had given the applicant to explain his case. Revisionary and Reviewing authorities have acted correctly. As the punishment has been meted out to the applicant keeping in mind the ^{preponderance} ~~probability~~ of probability, it cannot be faulted. Withholding of PE report was legal and the applicant cannot have a grievance on that. All the grounds raised in the OA are after-thought and the applicant cannot plead that he should have been accorded the lenient treatment which was given to his junior constable, who was less blameworthy. The applicant who has been found guilty of brutality has been correctly punished and no interference in the punishment was called for, urges Ms. Ahmed.

7. We have carefully considered the matter. Applicant in this OA, who was charge sheeted in connection with an alleged case of police brutality, states that the DE proceedings conducted against him were faulty and biased and that the orders were issued without at all considering the points raised by him. He also alleges that he has been discriminated in the award of punishment. It is seen that the applicant had made a specific request on 18.4.96 and 17.5.96 for the change of the inquiry officer, as he feared that the concerned authority was biased but the same has been summarily rejected on 5.6.96. This to our mind, has taken away the chances of fair enquiry and is against the directions of the Hon'ble Supreme Court in Indrani Bai Vs UOI (Supra). We further note that the summary of allegation and the charge were based on a preliminary enquiry report, which have not been supplied to the applicant nor has the concerned officer brought in as on a P.W. bring it as record. This has denied the applicant a Fair chance to explain his case and defend himself properly. Decision of the Hon'ble Supreme Court in the case of ECIL Vs B. Karunakar [JT 1993(2) SC 168, Constitutional Bench], further clarified by the decision in the case of Harender Arora Vs UOI & Others [2001 -6 SCC - 392] makes it evident that non-disclosure of materials which prejudices the cause of the charged official would vitiate the proceedings. This also was a clear violation of rule 16(3) of DP (PA) Rules. Still the Inquiry Officer has held the charge as proved and the same has been agreed to by the Disciplinary Authority who has punished him. The appellate authority however has felt that the penalty imposed on the applicant was not commensurate with what he felt was the gravity of

the alleged offence and imposed on the applicant a higher penalty. Though he has passed a somewhat lengthy order, he has not, interestingly, dealt with the points of irregularity, specifically raised by the applicant, which makes the order non-speaking in nature. It is also revealing that the Appellate Authority, who had allowed the appeal of the co-defaulter on the ground that the enquiry was 'lackadaisical' in nature as the ACP who conducted the preliminary enquiry was not brought in as PW and that the charge was stated to have been proved on extraneous consideration, has thought of enhancing the penalty on the applicant, basing on the same enquiry report. This shows non application of mind and has therefore rendered the order vitiated. The orders passed by the Revisionary Authority and the Reviewing Authority have only endorsed the orders of the Appellate Authority without any discussion. It is thus evident that the applicant has been punished on the basis of the findings of a faulty enquiry and by orders wherein the points raised by the charged official have not been considered and that too in a discriminatory manner. The proceedings and the orders are therefore liable to be set aside. However, we are of the view that keeping in mind the nature of the charges, the respondents would have to be given an opportunity to conduct the proceedings, once again, but in accordance with law.

8. In the above view of the matter the OA succeeds and is accordingly allowed. The impugned orders dated 22.4.1997, 2.6.98, 16.5.99 and 13.6.2000 are quashed and set aside. The matter is remanded to the respondents with the directions to go through the DE proceedings, after supplying to the applicant the PE report on which the

charges have been based and including the officer who conducted the PE among the list of witnesses. Needless to say the DE shall be conducted by a different Inquiry Officer. Applicant shall also co-operate with the proceedings so that they can be completed fast. Disciplinary Authority shall initiate the DE, as directed above within two months from the date of receipt of a copy of this order. No costs.

(Govindan S. Tampl)
Member (A)

/sunil/

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)