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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1614/2001

This the 30th day of January, 2002.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Jai Kishan S/O Amar Singh Sharma,
Vill. & P.O. Karala,
Delhi-110081.

... Applicant

(By Shri Manjit Singh Ahluwalia, Advocate)

-versus-

1. Commissioner of Police Delhi,
Police Headquarters,
I.P.Estate, New Delhi-110002.
2. Shri R.P.Singh,
Joint Commissioner of Police
(Prov. & LInes), Police Hqrs.,
I.P.Estate, New Delhi-110002.
3. Shri P.P.Dass,
Deputy Commissioner of Police (P&L),
Old Police Lines, Delhi.
4. Shri Satish Chandra (Enquiry Officer),
Assistant Commissioner of Police,
Old Police Lines, Delhi.
5. Shri T.N.Mohan,
Deputy Commissioner of Police Hqrs.,
I.P.Estate,
New Delhi-110002.

... Respondents

(By Shri Ram Kavar, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Punishment of dismissal of the applicant from service has been challenged by him in this OA. The applicant was charged that he had obtained illegal gratification amounting to Rs.2100/- from one Ram Swaroop, proprietor of M/s O.K.Motors, Shop No.1, Christian Colony, Patel Chest, Delhi, in connection with

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the job of body repairs of government vehicles. The applicant filed OA No.1161/1998 in this Tribunal against the departmental enquiry proceedings against him which was disposed of vide order dated 7.10.1999 with the direction that enquiry be held on the sole charge relating to allegation of accepting Rs.2100/- as illegal gratification pertaining to M/s O.K.Motors, Delhi. Thereupon, order dated 19.11.1999 entrusting the departmental enquiry to a new enquiry officer was issued. A fresh summary of allegations, list of documents and list of witnesses were prepared by the new enquiry officer and served upon the applicant. On the conclusion of enquiry, penalty of dismissal was imposed upon the applicant vide order dated 6.2.2001 (Annexure-A). The applicant filed CCP No.89/2001 in the High Court of Delhi against the said punishment. He also filed OA No.609/2001 in this Tribunal. This OA was dismissed vide order dated 12.3.2001 granting applicant the remedy of appeal. Applicant's appeal was rejected by the appellate authority on 17.5.2001.

2. The learned counsel of the applicant contended that the charge levelled against the applicant in the disciplinary enquiry is vague and does not disclose necessary details like time, place etc. The learned counsel placed reliance on *State of Uttar Pradesh v. Mohd. Sharif*, 1982 (2) SLR 265 (SC); and *Puttaswamy Gowda, U.M. v. Union of India*, 1987 (5) SLR 259 (Kar.), contending that the chargesheet not mentioning the date, time and location of misconduct should be held to be

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vague amounting to denial of reasonable opportunity to the charged officer.

3. The learned counsel of the respondents stated that the chargesheet and statement of allegations contained sufficient particulars which establishes that the chargesheet is not vague. The charged officer has been levelled corruption charges on the basis of an occurrence which took place on 26.5.1989 at the place of applicant's posting in 1st Bn. DAP. In our view, these are sufficient details provided in the charge. The learned counsel of the applicant has also stated that in the charge it is stated that the applicant had accepted illegal gratification "under coercion". He stated that when it was alleged and also proved in the enquiry that he had accepted illegal gratification "under coercion", he cannot be found to be guilty of illegal gratification. From the material on record, we find that basically applicant has been accused of extortion of Rs.2100/- as illegal gratification from Ram Swaroop. The expression "coercion" used in the charge as well as in the final order is only a wrong use of the word "coercion" while ingredients mentioned in the chargesheet, enquiry report and the final order establish the allegation/fact of extortion. The use of the expression "under coercion", in our view, does not make the charge vague. Even otherwise the citations referred by the learned counsel of the applicant are not based merely on the vagueness of the charge. There were various other factors which were taken into account in those cases holding the punishment

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awarded to the petitioners therein illegal and improper. Such is not the instant case, in our considered view.

4. The next point raised by the learned counsel of the applicant is that there are no eye witnesses examined in the enquiry. In this connection, the learned counsel of the respondents stated that whereas there were no eye witnesses in the matter, the charge has been brought home on the basis of circumstantial evidence and full opportunity was provided to the charged official to cross examine — all the prosecution witnesses. This was not denied by the learned counsel of the applicant that the statements of prosecution witnesses were recorded in the presence of the applicant and his defence assistant and he was given opportunity to cross examine them.


5. The learned counsel of the applicant also objected to bringing the statements recorded in the preliminary enquiry on record. Called upon to establish that these statements were relied upon in the enquiry to establish the allegations against the applicant, the learned counsel could not point out that reliance was placed on such statements either in the enquiry or in the final orders. From the facts, we find that neither the statements were brought on record nor were they relied upon nor any prejudice was caused to the charged official in this manner. The learned counsel stated that ASI Bal Kishan was examined in the enquiry but we find that his statement recorded in the preliminary enquiry, if any, was neither brought on record nor relied upon.

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6. The learned counsel of the applicant next raised the objection that provisions of rule 16(xii)(c) of the Delhi Police (Punishment & Appeal) Rules, 1980, were not observed by the respondents and that the applicant was not issued any notice regarding the proposed punishment. The relevant provision as extracted below :

"(c) If the disciplinary authority, having regard to its finding on all or any of the charges and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in rule 5 (i to vii) should be imposed on the Police Officer, it shall make an order imposing such penalty and it shall not be necessary to give the Police Officer an opportunity of making representation on the penalty proposed to be imposed."

The learned counsel of the applicant laid emphasis on the expression "proposed" used in this provision and stated that the applicant must be issued a notice regarding penalty proposed to be imposed. In our view, the learned counsel is interpreting the expression "proposed" out of context. The plain reading of the provision indicates that it is not necessary to give the charged official any opportunity of making representation on the penalty. A penalty can be imposed straightway by the disciplinary authority on the basis of the evidence adduced during the enquiry, if he is of the opinion that any of the penalties specified in rule 5 (i to vii) ibid has to be imposed. This objection of the learned counsel is also unacceptable.



7. The learned counsel of the applicant also contended that whereas the applicant was appointed by an IPS officer the disciplinary authority is subordinate in rank to the appointing authority, as he is not an IPS officer. From the facts on record, we find that the appointing authority as well as the disciplinary authority were holding the rank of Deputy Commissioner of Police. It is immaterial that the appointing authority belonged to IPS and the disciplinary authority did not belong to IPS as both of them held the same rank. Accordingly, in our view, this objection too does not carry any weight with us.

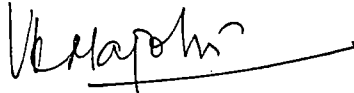
8. In the end, the learned counsel of the applicant stated that PW Raj Singh is stated to have died but the respondents have not furnished any death certificate and had taken into account earlier statements made by him. According to the respondents, PW Raj Singh died on 23.3.1999, therefore, he was dropped by the enquiry officer and his earlier statement dated 28.8.1997 recorded during the preliminary enquiry was brought on the enquiry file by supplying a copy of the said statement to the applicant against a proper receipt vide U.O. dated 4.5.2000. In our view, the procedure adopted by the enquiry officer in this respect is in accordance with the provisions contained in rule 16(iii) *ibid*.

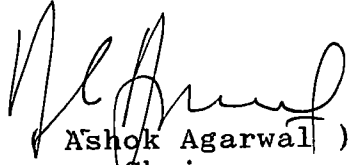
9. Having regard to the reasons recorded and discussion made above, we do not find any infirmity in

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the disciplinary proceedings conducted against the applicant.

10. The OA is, therefore, dismissed, however, without any costs.


(V. K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

/as/