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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1795 of 2001

New Delhi, this the 1st day of April, 2002

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

Asha Rani HC No. 623/N
R/o Village & Post Office
Shah Bad Mohamadpur,
New Delhi-110 061.

Presently Posted at

Police Post Majnu Ka Tilla,
PS Civil Lines, Delhi.

-APPLICANT

(By Advocate: Shri Anil Singal)

Versus

1. Commissioner of Police,
Police Head Quarters,
IP Estate,
New Delhi.
2. Joint Commissioner of Police,
Northern Range, PHQ,
IP Estate, New Delhi.
3. DCP (North District)
Civil Lines,
New Delhi.


-RESPONDENTS


(By Advocate: Mrs. Jasmine Ahmed)

O R D E R (OPAL)

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

The applicant in this case has assailed the order of initiation of departmental enquiry dated 29.12.1988 (Annexure A-1) as well as the summary of allegations (Annexure A-2). The applicant has also assailed the findings returned by the Inquiry Officer as well as the order of punishment and the order passed on appeal by the appellate authority and similarly the order passed by the revisional authority, Annexure A-6 and has prayed for quashing of all these orders.




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2. The applicant was proceeded departmentally on the following allegations:-

" It is alleged that on 8.7.98 at 2.30 P.M. Shri J.S. Rama ACP/Vigilance visited to Sarai Rohilla Delhi to conduct a check regarding performance of Duty-by-Duty official staff of P.S. Sarai Rohilla. A decoy was sent to lodge a FIR of pick pocketing of Rs.400/- and Driving Licence. The staff comprising of 1. W/HC Wahida No.1140/N on DO. 2. W/HC Asha No.623/N and 3. Ct. Jagat Singh No.1899/N were present there. On reforming the incident of pick pocketing in a running bus, they refused to record any report. On further request W/HC Asha No.623/N and Ct. Jagat No.1899/N demanded Rs.100/- in case the FIR was necessary.. The decoy in the first instance paid Rs.50/- but they did not accept. Later he paid Rs.100/- (Two notes of Rs.50/- each) to W/HC Asha but she did not receive herself and at her instance Constable Jagat No.1899/N accepted the same while W/HC Asha No.623/N started to record the NCR only. At the same time the raid was conducted and in the performance of the SHO Shri T.R. Mongia, Rs.100/- (Two notes of 50/- each) the bribe money, was recovered from the possession of Ct. Jagat Singh No.1899/N. Up to the end of this episode, W/HC Wahida (Do) did not speak anything.

The above act on the part of W/HC Asha No.623/N and Ct. Jagat Singh No.1899/N amounts to gross misconduct and unbecoming of a police official rendering them liable to be dealt with departmentally under the provision of Delhi Police (Punishment and Appeal) Rules, 1980."

3. In the grounds to challenge the impugned orders, the applicant submitted that the foundation of the enquiry itself is bad since the charges against the applicant is that she was posted at Police Station Sarai Rohilla and was performing the duty as duty official staff but the fact is that on the relevant day the applicant was not on the roll of Police Station Sarai Rohilla, rather she was posted at Police Station Bara Hindu Rao so she was not working as a duty official of the duty official staff of PS Sarai Rohilla and as such the charge itself is defective and by no evidence it could be proved at all that she was posted at Police Station Sarai Rohilla, hence the findings recorded by the



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Inquiry Officer and the orders passed by the disciplinary authority as well as passed by the appellate authority are all bad in the eyes of law since they are based on wrong foundation.

4. To support his contention, the counsel for the applicant has also submitted that another Constable Jagat Singh who was also posted at PS Sarai Rohilla and was amongst the duty official staff and was involved in the incident, was placed under suspension vide DD No. 11A dated 8.7.98 of PS Sarai Rohilla whereas the applicant who was not on the roll of PS Sarai Rohilla, so she could not put under suspension by the disciplinary authority.

5. The counsel for the applicant further submitted that applicant in her OA has also stated in paragraph 4.2 that she was in the staff of the PS Bara Hindu Rao, which fact has not been denied by the respondents in their written statement also. Thus the applicant submitted that all these officers have wrongly held her guilty and had passed the impugned order of punishment.

6. We have also heard the learned counsel for the respondents, who pointed out that since the applicant was a member of the Police Force though she was not on the rolls of PS Sarai Rohilla but she was present at the PS Sarai Rohilla at the time of incident and the Inquiry officer had rightly held that her presence at PS Sarai Rohilla was verified so she was also held guilty for

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recording of NCR instead of FIR on the statement of the decoy witness when he disclosed a cognizable offence for which an FIR should have been recorded.

7. The order of the disciplinary authority also says that the assertion of the applicant that she was not on duty also stands good on her part but she has been proved responsible for minimising the offence as she had registered an NCR instead of FIR, which is a cross misconduct and thus appeal of the applicant had also been turned down by the appellate authority as well as by the revisional authority.

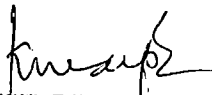
8. In our view this contention of the respondents has no merits because it is only the staff of the Police Station who is detailed as a duty staff official for recording the NCR and/or FIR is under an obligation to record the report either as a NCR or an FIR as the case may be on the statement of the complainant who comes to lodge a complaint at the police station. But a stranger (though may be a police constable) who is per-chance present at the Police Station is not under an obligation to record the statement of complainant and to register the same as NCR or FIR. It is an admitted case that applicant was not posted at PS Sarai Rohilla. It is a chance that she happens to be a member of Police Force and was present at PS Sarai Rohilla but she was not an authority to take a decision whether on the statement of a complainant either to record a NCR or an FIR. The only competent person who could take a decision whether to record an FIR or NCR was the duty staff of the concerned Police Station and if they were in doubt, they could have


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consulted the SHO or any other superior officer. But in any case the applicant was not under any obligation to record FIR or an NCR, so basically no DE could have been initiated against the applicant as she was not working as a duty officer at PS Sarai Rohilla and as such she was not under obligation to record NCR or FIR.

9. Hence, we are of the considered opinion that the applicant had been wrongly proceeded so the initiation of enquiry itself is to be quashed and consequently, based upon this, all the orders passed subsequently are also liable to be quashed. We hereby quash the orders and direct the respondents to restore her pay as if the impugned order of punishment is a non-est one. Applicant's pay be restored to the stage from which it was reduced. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)

Rakesh