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Central Administrative Tribunal, Principal Bench

Original Application No.202 of 2001

New Delhi, this the 15th day of September, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman

Hon'ble Mr. R.K. Upadhyaya, Member (A)

Head Constable Malkhan Singh No.9105/DAP
S/o Shri Mangat Singh, aged 38 years
Presently posted in 8th Bn, DAP,
R/o M275, Sector 12, Pratap Vihar,
Vijay Nagar, Ghaziabad,
Uttar Pradesh

.... Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi
2. Commissioner of Police, Delhi
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi
3. Joint Commissioner of Police,
New Delhi Range
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi
4. Addl. Dy. Commissioner of Police
North East District,
Delhi

.... Respondents

(By Advocate: Shri Ajay Gupta)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

Applicant is a Head Constable in Delhi Police. Disciplinary proceedings had been initiated against him. The enquiry officer who had been appointed in this regard had framed the following charge against the applicant:

"I Inspr. Suresh Kumar Dabas, I/C Special Staff NE Distt. (EO) charge you HC Malkhan Singh No.316/NE and Const. Hoshiyar Singh No.1262/NE that during an enquiry conducted by P.G. Cell/NE on the complaint of one Shri Ved Ram S/o Shri Verma R/o Village Sherpur, Delhi it has been revealed that an information was received from PCR on 8.8.97 vide DD No.22 at PP Khajuri Khas PS Gokal Puri that one

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person has been stabbed at Sher Pur Chowk, Karawal Nagar Road, Delhi. You HC Malkhan Singh No.316/NE attended that call and reached the spot alongwith Const. Hoshiyar Singh No.1262/NE and found that one person namely Chiku @ Janeshwar S/o Inder Pal R/o Ramji Lal Market, Tukmir Pur, Delhi was hurt by sharp edged on his forehead. Chiku was taken to GTB Hospital for medical examination wherein doctor issued MLC No.A-3006/97. According to the version of Chiku, he was stabbed by one Ved Ram @ Vedi because of refusal to provide a glass for drinking alcohol. You HC Malkhan Singh sent a Rukka to Duty Officer PS Gokal Puri to register a case U/S 324/506 IPC and the same was registered. Later on Ved Ram @ Vedi was arrested and was taken to GTB Hospital for medical examination on 9.8.97. The doctor issued MLC No.C-2163/97 in respect of Ved Ram @ Vedi and stated in his report that alcoholic smell is present in his breath but he was not under influence of alcohol and no external injuries seen on his body. Since Ved Ram @ Vedi was arrested on 9.8.97 while the case was registered on 8.8.97 there was no logic to take Ved Ram @ Vedi for medical examination in the night of 9.8.97 at 11.40 PM. Secondly, there was no point in applying section 506 IPC in that case. There were clear instructions that section 506 IPC will not be applied without the prior approval of District DCP but you HC Malkhan Singh failed to follow the instructions which shows some foul play in arresting Ved Ram @ Vedi and registering a case against him.

The above act on the part of you HC Malkhan Singh No.316/NE and Ct.Hoshiyar Singh No.1262/NE amounts to grave misconduct, negligence, misuse of official power and dereliction in the discharge of your official duties which renders you liable for departmental action under the Delhi Police (Punishment & Appeal) Rules, 1980."

2. Thereafter, on consideration of the matter, the enquiry officer had exonerated the applicant pertaining to the abovesaid charge. When the matter came up before the disciplinary authority, the Additional Deputy Commissioner of Police, North East District did not agree with the findings of the enquiry officer. It recorded that:

"The DE has been contacted Inspr. then I/c special staff/NE who submitted his finding concluding therein HC Malkhan Singh No.316/NE could not be proved. I have gone through the findings of the E.O. and other material available on record. I do not agree with the findings of the E.O. on the following grounds.

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(1) The two public witnesses have been examined during the course of departmental proceedings who have clearly supported the prosecution version. But the E.O. has not taken the same into consideration while drafting his findings.

2. PW-7 Shri B.K. Mishra have clearly stated that the defaulters misbehaved the complainant falsely implicated him and also gave him there of dire consequences if the complainant will not act as they want.

3. The defaulter HC did not obtain proper approval of the competent authority prior to get the case under section 506 IPC which was falsely and based on concocted story as per corroboration of PW-6 HC Harpal Singh No.99/NE P.S. Gokal Puri who has disposed that the case FIR No.541/1997 U/s 324/506 IPC, P.S. Gokal Puri has been sent for cancellation."

3. After considering the reply of the applicant, a penalty had been imposed on him that five years approved service of the applicant is forfeited temporarily for a period of five years entailing proportionate ^{reduction} in his pay with immediate effect and that he will not earn increment of pay during the period of reduction and on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay.

4. The applicant preferred an appeal. The same was dismissed and the appellate authority recorded:

"I have gone through the brief facts, parawise comments the representation of the appellants and other relevant documents placed on D.E. file. The appellants had not only applied section 506 IPC without proper sanction of the competent authority but had also misbehaved with the complainant and had acted in a high manner which does not warrant any lenient view. Under the circumstances which does not warrant any lenient view, with the punishment awarded by the disciplinary authority and hence their appeals are rejected."

5. The applicant also preferred a revision petition

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and the order passed thereon reads:

"The undersigned has carefully gone through the revision, evidence on record and also the facts and circumstances of the case. No doubt that the charge has been proved against the petitioner and he should be punished for the lapse committed by him. However, the punishment awarded to him seems to be on higher side. Therefore, I reduce the punishment of forfeiture of 5 years approved service for a period of five years temporarily to that of forfeiture of one year approved service permanently for a period of one year entailing proportionate reduction in his pay."

6. These orders passed by the disciplinary, appellate and the revisional authorities are being challenged.

7. Learned counsel for the applicant assailed the said orders asserting:

(a) the disciplinary authority did not record a tentative note of disagreement but totally disagreed with the findings and thus expressed himself on the merits of the matter; and

(b) in the note of disagreement, extraneous factors have been taken into consideration that the applicant misbehaved with the complainant and falsely implicated him. This was not even a part of the charge and even the appellate authority fell into the same error by considering this fact.

8. On both the counts, the contention of the learned

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counsel necessarily has to succeed.

9. The disciplinary authority has a right to differ from the report of the enquiry officer but in accordance with the well settled principles of law, it must record a tentative reason and convey to the delinquent. After obtaining the explanation, it may pass an order in accordance with law but it cannot, at the threshold while issuing the notice, come to a final finding.

10. In the case of Yoginath D. Bagde vs. State of Maharashtra and another, 1999 (7) SCC 62, the Supreme Court while considering a similar dispute, held:

"The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the **"TENTATIVE"** reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."

11. Similarly, the Delhi High Court in the case of Commissioner of Police vs. Constable Parmod Kumar (Civil Writ Petitions No.2665/2002 and 4593/2001) decided on 12.9.2002, while considering a similar controversy concluded:

"However, while disagreeing with such findings, he must arrive at a decision in good faith. He while disagreeing with the findings of the Inquiry officer, was required to state his reasons for such disagreement but such a decision was required to be tentative one and not a final one. A disciplinary authority at that stage could not have pre-determined the issue nor could arrive at a

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final finding. The records clearly suggest that he had arrived at a final conclusion and not a tentative one. He proceeded in the matter with a closed mind. An authority which proceeds in the matter of this nature with a pre-determined mind, cannot be expected to act fairly and impartially."

12. In the present case, it is obvious that the disciplinary authority had specifically recorded a final decision that he does not agree with the findings of the enquiry officer. It is not a tentative reason. Once a final decision has been arrived at, it is pre-judging the said controversy. The decision rendered by the Supreme Court in the case of Yoginath D. Bagde (supra), therefore, comes to the rescue of the applicant.

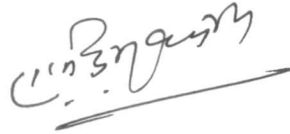
13. Even on the second count, it is obvious that there was no charge on the applicant regarding misbehaving with the complainant. The disciplinary authority as well as the appellate authority fell into an error in considering those facts. The purpose of framing the charge against the delinquent is to make him aware as to what are the assertions against him which he has to meet. The charge was never amended. Instead the factors which were not a part of the charge found their way into the note of disagreement and subsequently in the appellate order that had been passed. On both these counts, therefore, the impugned order cannot be sustained.

14. Resultantly, we allow the present application and quash the impugned orders. We remit the matter back to the disciplinary authority who may from the stage the note of

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disagreement, was recorded, proceed afresh in accordance with law.



(R.K. Upadhyaya)
Member (A)



(V.S. Aggarwal)
Chairman

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