

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2095 of 2001

New Delhi, this the 6th day of March, 2002

Hon'ble Mr. V.K. Majotra, Member (A)
HON'BLE MR. KULDIP SINGH, Member (J)

HC Kaptain Singh
S/o Shri Sukhbir Singh
R/o H.No. D-6, Swarn Park,
Main Rohtak Road, Near Village Mundka,
Nagloi, Delhi-110041.

-APPLICANTS

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Commissioner of Police PHQ,
IP Estate, New Delhi.
2. Joint Commissioner of Police,
Southern Range, PHQ,
New Delhi.
3. Deputy Commissioner of Police,
South West, Vasant Vihar,
New Delhi.
4. Deputy Commissioner of Police (Estt.)
PHQ, I.P. Estate,
New Delhi.

-RESPONDENTS

(By Advocate: Ms. Sumedha Sharma)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Jud1)

Applicant was proceeded departmentally on the allegations that the applicant on 23.12.1998 while posted at PS Jafarpur Kalan was entrusted with DD No. 16-A for enquiry. He reached village Rawta in Harijan Basti and contacted Smt. Mela Devi. Instead of recording her proper and appropriate statement he obtained her thumb impression on the statement recorded by him on his own. Instead of registering a proper case of rape as disclosed by her, the applicant threatened her and demanded Rs. 2,000/- for medical examination in order to discourage her. The applicant further misbehaved with her by saying "inke sath aisa vaise ho bhi jai to kya hua". Later on a

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case FIR No. 159/98 u/s 376 IPC PAS Jafarpur was registered on 29.12.1998 by SI Madan Lal on the statement of Mela Devi. This act on the part of the applicant is stated to be in grave misconduct of dereliction and misuse of his official powers and applicant was liable to be dealt with departmentally. That is why he is proceeded in a departmental enquiry.

2. The enquiry was held and the Inquiry officer exonerated the applicant. However, the disciplinary authority recorded a dissenting note which was also sent to the applicant and on the basis of that findings the applicant was punished vide order of the disciplinary authority dated 8.8.2000. The applicant was awarded a punishment of withholding of the next increment for a period of 2 years without cumulative effect. Appeal against the said order was also dismissed and the appellate authority did not propose any change in the punishment order.

3. The applicant has challenged these impugned orders and one of the ground taken up by the applicant is that in the dissenting note the disciplinary authority had relied upon the statement of Inspector Balwant Singh PW-3 who had supported/started an earlier enquiry conducted by the said Inspector Balwant Singh.

4. The applicant has also referred to the statement of PW-3 wherein it has come in the statement of Balwant Singh that he had submitted his report on 14.5.99 to DCP Vigilance Branch which was marked as PW3/A.

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5. The learned counsel appearing for the applicant submitted that though this document PW-3/A has been proved and marked as PW-3/A in the enquiry and the same has been relied upon by the disciplinary authority while recording the dissenting note but this document has not been supplied to the applicant and to prove his case he has referred to a list of documents which was annexed with the memo when the applicant was issued the memo. The memo does not find mention of documents PW-3/A.

6. On going though the same we also find that the document PW-3/A was not supplied to the applicant at the time of supply of other documents nor it find any mention in the list of documents relied upon in the enquiry. Thus it is to be presumed that during the enquiry a document which was proved had not been supplied nor relied upon by the department but had formed the basis of the recording of the dissent note by the disciplinary authority. Thus the learned counsel for the applicant prayed that since extraneous material had been taken into consideration so the dissent note cannot stand and the proceeding taken subsequent to the recording of the dissent note are also bad in law and the same are liable to be quashed.

7. In reply to this Ms. Sumedha Sharma appearing for the department submitted that the document PW-3/A does not find mention in the list of documents but it has not caused any prejudice to the applicant since the applicant was aware that preliminary enquiry was

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conducted by the Inspector Balwant Singh of the Vigilance Branch and since no prejudice has been caused so these orders need not be quashed.

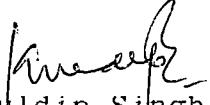
8. We have given our thoughtful consideration to the matter involved.

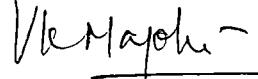
9. The fact that a preliminary enquiry was conducted by Vigilance Inspector PW-3 and his report has been proved during the enquiry as PW-3/A and the same had been relied upon by the disciplinary authority while recording his dissent note is not disputed, but it cannot be said that this document PW-3/A has not caused any prejudice to the applicant when the sole basis of the recording of dissent note is the preliminary enquiry conducted by the Inspector Balwant Singh who had submitted his report vide PW-3/A. Non-supply of this document to the applicant at the relevant time of supply of the documents and the reliance of the same by the disciplinary authority on the same will go to show that the applicant has not been afforded a proper opportunity to defend himself in this respect.

10. So we have no option but to quash and set aside the dissent note recorded by the disciplinary authority and all the orders passed subsequent thereto on the basis of dissent note and the orders recorded by the disciplinary authority and the case has to be remanded back to the department so that a proper opportunity be afforded to the applicant. Accordingly we remand back the case to the department and direct the respondents-department to take up the proceedings and

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afford an opportunity to applicant in this regard. OA is allowed withs the directions that the department shall supply the document PW-3/A to the applicant and thereafter may record the statement of Inspector Balwant Singh giving an opportunity to the applicant to cross-examine the said witnesses and thereafter the department may complete the proceedings in accordance with the rules and instructions and judicial pronouncements on the subject. This exercise be completed within a period of 4 months from the date of receipt of a copy of this order. No costs.


(Kuldip Singh)
Member (J)


(V.K. Majotra)
Member (A)

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