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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 2649/2001

New Delhi this the 1st day of May, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Teeka Ram
(D-1/287)
S/o Shri Har Sahai Meena
R/o E-51, Moti Bagh,
New Delhi

...Applicant

(By Advocate: Shri Shyam Babu)

vs.

1. The Lt. Governor, Delhi
Rajniwas,
Delhi.
 2. Commissioner of Police
Delhi
Police Headquarters
I.P. Estate,
New Delhi
 3. Joint Commissioner of Police,
New Delhi Range,
Police Headquarters,
I.T.O.,
New Delhi.
-Respondents.

(By Advocate: Shri George Paracken)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

Applicant (Teeka Ram) is an Inspector in the Delhi Police. Departmental proceedings had been initiated against him on the allegation that on the night intervening 10/11-6-1994 about 1 AM, applicant along with certain other police

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officials/officers reached the store of Dost Mohd. at shop No.250/A-1 Dargah Panch Peer, Savitri Nagar Kabristan, Malviya Nagar where Pesh Imam Mohd.Yameen and others were sleeping. There were two other public persons also with the police party who were identified as Kamru and Nanuwa Kasai. The police party woke up the servants and Pesh Imam and asked them about the whereabouts of Dost Mohd. Some of them told that Dost Mohd was at his house while some others expressed their ignorance in this regard. The police personnel lifted the telephone which was installed at the store of Dost Mohd. and a calculator. After closing the door of the room, the police party including the two other public persons reached the house of Dost Mohd. in Hauz Rani and called Dost Mohd. from below the house. When Dost Mohd. saw the policemen and Nanuwa Kasai with whom he had enmity, he refused to come down. Dost Mohd. asked what was the matter. They did not disclose anything. Then the policemen broke the cement jali and reached the first floor where Dost Mohd. was present with his family members and tried to brake the gate. Dost Mohd. and others raised loud alarm. Since Dost Mohd. apprehended that he might be involved in a false case, he made a loud noise and also made a telephone call to Police Control Room on 100 number. On hearing his voice,

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Hazi Noor Hassan came to the house of Dost Mohd. where the police party was already present. On inquiry from Hazi Noor Hassan, the police told that they had come to conduct a search of the house of Dost Mohd. as they had some information. Hazi Noor Hassan called Hazi Abbas and Shri S.C.Verma who were the respectables of the locality and on their assurance Dost Mohd. opened the door. The police party took search of the two rooms but nothing was recovered. Sub Inspector Vijay Pal Singh took the signatures of Hazi Noor Hassan, Hazi Abbas, S.C.Verma and Dost Mohd. on a page of his private diary. In the meantime, ASI Ram Avtar reached the house of Dost Mohd. to attend the Police Control Room call. The said police officer enquired and was told that the policemen were including the applicant and others. The said police officer made his arrival vide Daily Diary No.24-A. Thereafter the policemen left the place leaving Dost Mohd. at his house. Dost Mohd. found Rs.1500/- missing from his kitchen. Thereafter the police party went to the store of Dost Mohd. and once again opened the gate of the room. They took Pesh Imam Mohd. Yameen to the Police Station Krishna Nagar where he was falsely implicated in a case punishable under Sections 25/54/59 of the Arms Act. According to the department, the search of the house of Dost Mohd. was unwarranted and illegal. The motive

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was to apprehend Dost Mohd. and involve him in a false case in collusion with Kamru and Nanuwa Kasai and that there was a nexus between the criminals and one of the police officers.

2. The inquiry officer exonerated the applicant, but the disciplinary authority recorded a note of disagreement and we reproduce the relevant extracts of the same which read as under:-

"I have carefully considered the findings submitted by the Enquiry Officer in the light of the facts and circumstances of the case and evidence on record. I disagree with the conclusion arrived at by the Enquiry Officer that the charges against the defaulters have not been substantiated. From the evidence on record, it is obvious that Case FIR No.228/94 dated 11.6.94 u/s 25/54/59 Arms Act P.S. Krishna Nagar was registered at 0142 hours (PW-5/A) based on a rukka sent from the place of incident i.e. Jagat Puri Bus Stand. The date and hour of occurrence has been mentioned as 11.6.94 at 12.02 A.M. Further the time of despatch of the tehrir has been given in the rukka at 1.30 A.M. However at 1.26 A.M. Dost Mohd. r/o 268/D, Hauz Rani, P.S. Malviya Nagar recorded a complaint with the PCR (PE-20) that 3/4 people outside his premises of whom one person claimed to be a police wala. This information was recorded in P.S. Malviya Nagar vide DD No.23-A (PE-4/A). A PCR van reached the spot at 0145 hours and recorded a report that 3/4 persons who are policemen of the East District who had come for the raid at the premises (PE-20). As far as P.S. Malviya Nagar is concerned, ASI Ram Avtar had gone to the spot vide DD No.23-A dated 11.6.94 (exh.PW-4/A) on an information received at 1.35 A.M. and returned vide DD No.24-A dated 11.6.94 at 2.40 A.M. (Exh.PW-4/B). In the entry, the ASI has categorically stated that Inspr.Tikka Ram of P.S. Krishna Nagar alongwith staff were found on the spot who had conducted a raid at 268-D, Hauz Rani. Further, a search memo was prepared on the spot

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which was signed by witnesses Hazi Noor Hasan, Hazi Abbas and S.C. Verma besides SI Vijay Pal who prepared the same (Ex.PW/5A) indicating case FIR No.228/94 dated 11.6.94. Const. Satish had been sent with the rukka from the spot to P.S. Krishna Nagar as mentioned in CD No.1 dated 11.6.94 of the case, annexed with the defence statement of Inspr. Tikka Ram, SI Vijay Pal Singh, SI Dharambir and ASI Om Prakash. It is stated at page-8 that Const. Satish No.1563/E met the police party at P.S. Krishna Nagar when they returned and the Const. gave a copy of the FIR to the I.O. Thereafter, the statement of the Const. was recorded and FIR taken on file.

The entire police story is bogus in nature and it is quite evident that Pesh Imam Mohd. Yameen was picked up from the store of Dost. Mohd. in the area of P.S. Malviya Nagar and falsely implicated in the case under the arms act. The police party could obviously not have been at two places at one time....

The documentary evidence by itself has shown the FIR to be bogus in nature. However, the statements of PWS-1, 2, 3, 7 and 10 have also clearly corroborated the fact that Pesh Imam Yameen was picked up from the store of Dost. Mohd. at Savitri Nagar. The defaulters have produced DWs-1 and 2 in support of the version that Pesh Imam Yameen was arrested as stated in FIR No.228/94, in Jagat Puri Bus Stand. On one hand, these witnesses have stated that at about 11.45 P.M. while moving on their maruti van from Karol Bagh to Krishna Nagar, they stopped on seeing two policemen apprehending a person....

The testimony of DW-3 a Watch Repairer, obviously, has been incorporated with similar intentions. According to DW-3, the watch of SI Vijay Pal Singh was running in advance. However, DW-2 has clearly stated that he saw the police party at the relevant spot at 11.40 - 11.45 P.M. How this should make a difference in the case is not clear as the rukka was sent from the spot at 1.30 A.M., whereas the police party reached Dost Mohd.'s house at 1.15 - 1.20 A.M. Also in the defence statement, the defendants have merely stated that on 11.6.94 the duty officer informed them that the time of sending of rukka was wrong as per the time of P.S. clock and the version of Const. Satish. The defaulters have cleverly, deliberately, not gone into the specifics of the basic key issue i.e. what was the differential in the time factor, and how it affected the overall sequence of events considering that DWs-1 and 2 themselves have fixed the presence of the police party at 11.40/11.45 P.M. at Jagatpuri bus Stand. If the duty officer thought that

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there have been something wrong in the time factor, then why wasn't an appropriate DD entry recorded? The plea has been taken that the accused Pesh Imam Yameen was subjected to sustained/interrogation and his disclosure statement recorded in a running vehicle. This has been done, obviously, to show that the police presence at Dost Mohd.'s house at 1.15 - 1.20 A.M. was possible. This is totally unacceptable. The vehicle could not have been running anywhere but to the P.S. until such "sustained interrogation" was completed. Since the Police Station is only minutes away from the spot, not much interrogation could have taken place which could have led to a disclosure by the accused and the police party rushing post-haste towards P.S. Malviya Nagar....

What, unfortunate, is the fact that the police story itself is entirely bogus in nature and Pesh Imam Yameen was picked up from the store of Dost. Mohd. as alleged and subsequently the weapons planted on him. The story regarding the Bhatti in front of Dost Mohd's house is red-herring, made out to confuse the issue. How and why the Addl. DCP/East gave the approval for sanction is not the subject matter of the DE. It is suffice to say that Addl. DCP/East erred in giving the prosecution sanction and that the case, if pending trial, should forthwith be withdrawn.

The charge stands adequately proved against the defaulters. A copy of the notice alongwith findings of the E.O. are enclosed herewith with the direction that Inspr. Tikka Ram No.D-1840, SI Vijay Pal No.D-2787, SI Dharambir Gautam No.D-3019, ASI Om Prakash Tyagi No.1463/D, Ct. Manveer No.772/E, Const. Satish Kumar No.1653/E and Const. Vijay Pal No.629/E may submit their representations within 15 days from the date of receipt of this notice, failing which, it will be presumed that they have nothing to say in their defence and the orders will be passed, on merits of the case. They may also seek a personal hearing if they so desire."

It was followed by the disciplinary authority by imposing the penalty reducing the applicant to the rank of Sub Inspector for a period of three years. He preferred an appeal and the order of the disciplinary authority was modified in the

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following terms:-

"Therefore, I am inclined to take a lenient view and reduce the punishment of reduction in rank from Inspector to Sub-Inspector to that of forfeiture of his five years approved service permanently for a period of one year entailing proportionate reduction in his pay.

Let the appellant be informed accordingly."

Hence the present application challenging the orders referred to above.

3. During the course of submissions, the learned counsel for the applicant raised a few points, but we are not delving into those controversies. It was contended by the learned counsel for the applicant that while recording the note of disagreement, the disciplinary authority did not give a tentative reasoning to come to a final finding and, therefore, the impugned orders as such cannot be sustained because according to the learned counsel, once such is the situation, necessarily there is not proper application of mind.

4. This proposition as such cannot be disputed that the disciplinary authority is not bound by the report of the inquiry officer. He has a right to differ, but in accordance with the settled principles of law, ^{delinquent} ~~he~~ must be conveyed the note of disagreement which should be a speaking order giving the tentative reasons in this regard.

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If the final findings are arrived at in that event, it would be pre-judging the issue because the final findings can only be arrived at after the concerned officer replies and the same has been considered. The Supreme Court in the case of **Punjab National Bank and others v. Kunj Behari Misra**, (1998) 7 SCC 84 in this regard held:-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

The case of **Yoginath D. Bagde v. State of Maharashtra and Another**, 1999 (7) SCC 62 provides clear guide-lines in this regard. There too the same controversy had come up for consideration and the Supreme Court reiterated that it is only the tentative reasons which have to be conveyed. The

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Supreme Court 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."

If it is the final finding that has already been arrived at, in that event, the alleged delinquent can reasonably complain of bias and not affording an opportunity and we take advantage in referring to the decision of the Supreme Court in the case of Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant & Ors., AIR 2001 SC 24. A Division Bench of the Delhi High Court had also considered almost similar controversy in the case of Commissioner of Police v. Constable Parmod Kumar in Civil Writ Petitions No.2665/2002 and 4593/2001 decided on 12.9.2002. Like in the present case, a note of disagreement was recorded by the disciplinary authority that the charges stood proved. The Delhi High Court had set aside the punishment that had been imposed and 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

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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 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."

5. As referred to above, the position herein is no different. We have already extracted the relevant portion of the note of disagreement. At different places, the disciplinary authority rather than giving a tentative opinion had finally come to a conclusion that the charge as against the applicant had established. Once the inquiry officer had exonerated the applicant and the disciplinary authority thought it proper to take a decision otherwise, only a tentative decision should have been conveyed. Same has not been done. The disciplinary authority could not pre-determine the issue without noticing the reply of the applicant to the tentative decision that may be conveyed. The disciplinary authority which proceeds with a pre-determined mind cannot be taken to have acted fairly and impartially.

6. Resultantly, we allow the present application and quash the impugned order. It is directed that if deemed appropriate, the disciplinary may from the stage the note of disagreement was recorded proceed afresh in

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accordance with law. No costs.

Announced.

(Govindan S. Pampal)
Member (A)

/s/s/

V.S. Aggarwal
(V. S. Aggarwal)
Chairman