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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2736/2001

This the 4th day of February, 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

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

Yashpal Singh, Ex. Const. No.1421/SW
(now 6283/DAP) S/O Jai Prakash,
R/O Vill. Kankather Hussan Pur,
P.O. Hapur, P.O. Haphipur,
Distt. Ghaziabad (UP).

... Applicant

(By Shri Sama Singh, Advocate)

-versus-

1. Govt. of N.C.T. of Delhi
through its Chief Secretary,
Delhi Secretariat, I.P.Estate,
New Delhi.
2. Commissioner of Police,
Delhi Police Headquarters,
M.S.O.Building, I.P.Estate,
New Delhi-110002.
3. Addl. Commissioner of Police
(Armed Police), New Police Lines,
Kingsway Camp, Delhi-110009.
4. Deputy Commissioner of Police,
Ist BN, DAP, New Police Lines,
Kingsway Camp,
Delhi-110009.

... Respondents

(By Shri George Paracken, Advocate)

O R D E R (ORAL)

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

Applicant has challenged punishment of dismissal from service in departmental enquiry conducted against him on the charge of extortion committed by him on 19.4.1994. The punishment of dismissal was upheld in appeal.

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2. The learned counsel of applicant, Shri Sama Singh, has challenged the punishment on the following grounds :

- (1) it is a case of no evidence, respondents having not adduced any evidence in support of the allegations;
- (2) whereas PW Taufique Ahmed who was allegedly accompanying Mohd. Irshad to IGI Airport was dropped by the prosecution, Shahabuddin Khan was examined in the absence of applicant;
- (3) respondents have conducted ex parte proceedings against applicant in violation of rule 18 of the Delhi Police (Punishment & Appeal) Rules, 1980;
- (4) whereas in the departmental enquiry the allegation related to extortion of 50 Ringi (Singapore currency) from Mohd. Irshad depriving him of his money, prior approval of the Additional Commissioner of Police to proceed departmentally against the charged officer has not been obtained, which is in clear violation of the provisions of rule 15(2) of the Rules *ibid*; and
- (5) the punishment inflicted upon applicant is disproportionate without a finding of applicant being unfit for service having been brought home in the enquiry.

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3. We have perused the records produced by respondents relating to the departmental enquiry apart from hearing the counsel on either side.

4. As to the plea of no evidence having been adduced by respondents, we find that the enquiry officer has examined three PWs (Prosecution Witnesses) as also defence witnesses. After going through the records and the findings of the enquiry officer the contention of the learned counsel of applicant that no evidence has been adduced by respondents in support of the allegations is not established. The enquiry officer and the disciplinary authority have relied on the statement of PW Shahabuddin Khan. As there is preponderance of probability even on the basis of one witness, the Court cannot interfere with the conclusion in the enquiry.

5. It has been stated on behalf of applicant that Taufique Ahmed and Mohd. Irshad had not been examined by respondents and Shahabuddin Khan had been examined only in the absence of applicant. It is correct that Taufique Ahmed who was stated to be accompanying Mohd. Irshad was not examined in the enquiry. Respondents have stated that PW Taufique Ahmed could not be examined as he was in Saudi Arabia and Shahabuddin Khan had no knowledge of his address in Saudi Arabia; as such, the enquiry officer was in the right to have brought Taufique Ahmed's earlier statement on record as per provisions of rule 16(iii) of the Rules *ibid*. We do not find any infirmity as to the procedure adopted in the case of Taufique Ahmed. So far as the examination of Shahabuddin Khan in the absence of

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applicant is concerned, the enquiry records reveal that applicant had been participating in the enquiry off and on. On 8.4.1997, it has been recorded that PW Shahabuddin Khan was present but applicant had absented despite having noted the summons on 31.3.1997. The enquiry officer was permitted to proceed ex parte against applicant vide order of the disciplinary authority No.4186-87/HAP-II dated 23.4.1997. Provisions of rule 18 ibid allow the enquiry officer to institute ex parte proceedings with the prior approval of the disciplinary authority. In the present case, the procedure prescribed in the provisions of rule 18 has been followed in adopting ^{ex parte} departmental proceedings against applicant. On 30.4.1997, PW Shahabuddin Khan was examined in the absence of applicant against whom orders for proceeding ex parte had been passed by the competent authority. Applicant cannot be allowed to raise any objection for examining PW Shahabuddin Khan in his absence when ex parte proceedings had been initiated against him as per the relevant provisions of law.

6. On behalf of applicant an objection has been raised that when in the preliminary enquiry commission of a cognizable offence had been disclosed, departmental enquiry could have been ordered only after obtaining prior approval of the Additional Commissioner of Police as required vide rule 15(2). In this regard, the learned counsel of respondents, Shri George Paracken, maintained that provisions of sub-rule (1) and not sub-rule (2) of rule 15 are applicable to the facts of the instant case. According to him, in this case, no proper orders for

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conducting preliminary enquiry were made by the disciplinary authority. SHO Vasant Kunj, the supervisory officer of applicant, conducted the fact-finding enquiry immediately on receipt of complaint against him and recorded statement of concerned persons and submitted the report on 22.6.1994 to the disciplinary authority, which is a factual report and not a preliminary enquiry ordered by the disciplinary authority. He maintained that in such cases, disciplinary authority is competent to order departmental enquiry straightaway under rule 15(1). The provisions of rule 15(1) read as follows :

"15. Preliminary enquiries. - (1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally precede a departmental enquiry."

After going through the facts of the case and the provisions of rule 15(1) we are in agreement with the learned counsel of respondents that respondents have not made any mistake in proceeding in the matter as per provisions of rule 15(1). In this backdrop, we are of the considered view that prior approval of the Additional Commissioner was not required to initiate a departmental enquiry against applicant as the provisions of rule 15(2) are not applicable to the facts of the present case.

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7. As to the exception taken on behalf of applicant that the finding to the effect that applicant is unfit for service has not been brought home in the enquiry, we find that the enquiry officer has held the charge against applicant as proved in the enquiry and the disciplinary authority agreeing with the findings of the enquiry has held that the charge of extortion of money is "a grave misconduct which proves complete unfitness of the defaulter Constable in the disciplined force like Police." Whereas the charge had been found to be proved in the findings of the enquiry officer himself, conclusion of the disciplinary authority that the charge proved is a grave misconduct making applicant completely unfit for retention in the disciplined force like police, cannot be faulted with. It is within the powers of the disciplinary authority to form an opinion about the gravity of the misconduct when the charge has been proved and impose an appropriate punishment. The quantum of penalty has to be commensurate with the gravity of charge. The adequacy of penalty, unless it is mala fide, is not a matter for the Tribunal to be concerned with. The Tribunal cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter. For this opinion, we rely on *Union of India v Parmananda*, AIR 1989 SC 1185.

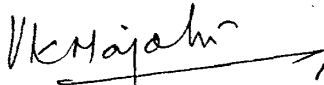
8. If one has regard to the discussion made and reasons recorded above, it has to be concluded that there is no infirmity in the proceedings against applicant as

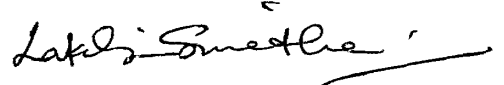
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well as the punishment of dismissal imposed upon applicant.

9. The OA is dismissed accordingly. No costs.


(V. K. Majotra)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

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