

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

(28)

O.A. NO. 2766/2001

NEW DELHI. <sup>13<sup>th</sup></sup> DAY OF AUGUST 2003

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.K. NAIK, MEMBER (A)

Ex. Constable Prabhu Dayal,  
No.2046/SD  
F-1/241,  
Sangam Vihar  
New Delhi

.....Applicant

(By Sh. Ravikant, Proxy counsel for Sh. Arun  
Bhardwaj, Advocate)

VERSUS

1. Commissioner of Police,  
IP Estate PHQ, New Delhi
2. Jt. commissioner of Police,  
Southern Range,  
MSO Building, Police Headquarters,  
New Delhi
3. Additional Dly. Commissioner of police,  
South District, Hauzkhast,  
New Delhi

.....Respondents

(By Shri George Paracken, Advocate)

O R D E R

BY HON'BLE SHRI S.K. NAIK, MEMBER (A)

By virtue of this OA, Ex. Constable Prabhu Dayal assails the order of dismissal dated 11.12.2000 passed by the Additional Dy. Commissioner of Police, South District, New Delhi and order rejecting the appeal passed by Joint Commissioner of police Southern Range on 2.8.2001 as

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also the findings of the Enquiry Officer dated 27.07.2000.

The applicant has also requested for quashing of these orders.

2. Amongst numerous grounds advanced in the memorandum of application, the counsel for the applicant has preferred to argue on the impugned orders being untenable firstly on account of their being no prior approval of the Additional Commissioner of Police as required under Rule 15(2) of Delhi Police (Punishment & Appeal) Rules 1980. According to him a Preliminary Enquiry was held into the matter but the applicant has been deprived of the opportunity to defend himself in the absence of any Show Cause notice as required under the above stated rules. In response to this averment the counsel for the respondent has stated that no preliminary enquiry as such was ordered in the matter by the Competent Authority and the applicant has not raised this issue during various opportunities provided to him by the Enquiry Officer. The reliance on the statement made by PW-3 SI Ramesh Dixit is also misplaced in as much as it is nowhere stated in the cross examination that SI Ramesh Dixit conducted the Enquiry which was specifically ordered to be a Preliminary Enquiry.

3. The other point argued by the learned counsel for applicant relates to non supply of documents. According to him the applicant requested to Enquiry Officer to supply some additional documents and also

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requested for the inspection of the Departmental Enquiry proceedings file but neither the documents were supplied to him nor was his request to inspect the DE file acceded to. The counsel for the respondent on this point has categorically denied that the applicant was deprived of any such opportunity on the contrary the counsel has argued that it is only an after thought as the applicant was fully associated and indeed participated in all the proceedings.

✓ 4. On the merits of the case counsel for the applicant has argued that the findings of the Enquiry Officer suffers from number of lacunae warranting interference by the Tribunal. In support of this contention he has referred to the cheque allegedly given to the applicant not having been produced in evidence, the failure of the witnesses to identify the applicant as also the failure on the part of the prosecution to prove as to whether the cheque which was allegedly given to the applicant had been encashed. He has also stated that there are large gaps in the statements of PWs which have not been explained in the Enquiry Report. Besides the applicant has been awarded extreme penalty of dismissal which is not commensurate with the charges levelled against him. The counsel has therefore argued that interference by the Tribunal is warranted in the interest of justice.

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Charge levelled against the applicant reads as under:

"I CHANDER KANT SHARMA Insp./S.H.O. GK-I charge you Const. Prabhu Dayal No. 2046/SD (PIS No.28821249) that on 21-1-2000 while you were posted in P.S. Hauz Khas you went at C-84, Dayanand Colony Lajpat Nagar in the House of Sh. Devinder Ahluwalia and told him that you had come from P.S. Sriniwaspuri and has arrest warrant against him. Sh. Devinder Ahluwalia told You Const, Prabhu Dayal No. 2046/SD (PIS NO.28821249) that his case was over in the court and he had made full payments to the other party. On this You Const. Prabhu Dayal No.2046/SD (PIS NO.28821249) demanded Rs.50,000/- to finish the case. Devender Ahluwalia had only Rs.2500/- at that time so he asked his friend Sh. Neeraj Bhatia for money who in turn took Sh. Devender Ahluwalia and You Const. Prabhu Dayal No.2046/SD (PIS NO.28821249). to City Bank AT Centre and withdrew Rs.5000/- from ATM card and then Sh Devender Ahluwalia gave Rs.5000/- + Rs.2,500/- to You Const. Prabhu Dayal No.2046/SD (PIS NO.28821249) Shri Neeraj Bhatia also gave one self cheque of Rs.15,000 to You Const. Prabhu Dayal No.2046/SD (PIS NO.28821249) and then Sh. Devender Ahluwalia was let off by You Const. Prabhu Dayal No.2046/SD (PIS NO.28821249)."

You Const. Prabhu Dayal No.2046/SD (PIS NO.28821249) gave a report of A.T. (Adam Tamil) on the warrant. As per records of P.S. Sriniwaspuri that you You Const. Prabhu Dayal No.2046/SD (PIS NO.28821249) had been given the bailable warrants against Sh Devender Ahluwalia while you were posted at P.S. Sriniwaspuri and which were returned by you as unexecuted on the pretext of change of address whereas you knew the whereabouts of Sh. Devender Ahluwalia.

The above act on the part of you Const. Prabhu Dayal No.2046/SD (PIS NO.28821249) amounts to gross misconduct and unbecoming of a police officer which renders you liable for departmental action punishable under provisions of Delhi Police (Punishment and Appeal) Rules, 1980".

5. The proceedings of the enquiry indicate that both the prosecution and defence side have availed full

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opportunity to present their side of the case. While the department produced as many as five PWs including the complainant, the applicant has also produced four witnesses in his defence. The Enquiry Officer has discussed the evidence in detail and arrived at the findings that the charge against the applicant stands proved. While the counsel for the applicant has spent major part of his argument to point out to us the deficiencies and gaps in the statements of various PWs as also had found fault with the non production and encashment of the Cheque, some of the PWs not being in position to identify him, we would like to state at this stage itself that the administrative Tribunal cannot sit as a court of appeal. It is not our job to scrutinise and reappreciate the evidence based on which the Enquiry Authority arrived at its findings. In a charge of this nature what is to be seen is as to whether the evidence adduced tilts the balance against the delinquent official to stand the test of preponderance of probability. In this case we find that the Enquiry Officer has arrived at the findings relying on the material evidence relevant to the charge. The evidence before him was sufficient to arrive at the conclusion. The non- production and non-encashment of cheque would not have materially affected the outcome as the complainant, soon after giving the self cheque to the applicant had passed on instruction to his banker that the cheque had been lost.

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6. The averments of the counsel for the applicant, therefore, carry no weight.

7. In so far as the other points raised by the counsel for the applicant are concerned we tend to agree with the arguments advanced by the counsel of the respondents that neither the Enquiry Officer nor the order passed by the Disciplinary Authority and the Appellate Authorities suffer from the irregularities stated to have been committed with regard to the procedure. Mere allegation without sufficient explanation as to how prejudice would be caused because of the procedural gaps, in our view would not materially affect the findings by the E.O. The application therefore has no merit and is dismissed with no order as to cost.

Naik  
(S.K. Naik)

Member (A)

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

Patwal/