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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2770/2001

New Delhi this the 2nd day of April, 2003.

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

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

Ex.Asstt. Sub-Inspector Sube Singh
No.786/SB
S/o Shri Suraj Bhan
R/o Village & P.O. Majri Kalan
Police Station- Madan
District Alwar
Rajasthan

....Applicant

(By Shri Sachin Chauhan, Advocate)

-versus-

(1) Union of India
Through its Secretary
Ministry of Home Affairs
North Block,
New Delhi.

2. Special Commissioner of Police
Police Headquarters, I.P.Estate
M.S.O.Building, New Delhi.

3. Deputy Commissioner of Police
Special Branch
Police Headquarters, I.P.Estate
M.S.O.Building,
New Delhi.

.... Respondents

(By Shri George Paracken, Advocate)

O R D E R (ORAL)

Justice V.S.Aggarwal:-

Applicant (Sube Singh) was an Assistant Sub Inspector in Delhi Police. The Deputy Commissioner of Police, Special Branch, vide the order of 9.2.2001, in pursuance of the disciplinary proceedings that had been initiated, dismissed the applicant from service. He preferred an appeal which was dismissed on 4.6.2001.

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2. By virtue of the present application, the applicant seeks quashing of the orders passed by the disciplinary as well the appellate authority.

3. The facts alleged against the applicant are that while posted in the North West Zone, he conducted the passport verification pertaining to 10 applications. The applicant submitted a satisfactory report. On verification, it transpired that 8 out of the 10 persons had never resided at the given addresses and 2 addresses mentioned against the applications were not in existence. In this process, the authorities felt that the applicant had submitted a wrong/bogus report with ulterior motive.

4. The inquiry officer had returned the finding that the charge against the applicant is substantiated and the disciplinary authority and the appellate authority thereupon had passed the orders referred to above already.

5. In the reply filed, the respondents contested the assertions.

6. The learned counsel for the applicant in the first instance urged that the charge against the applicant was that he had verified the applications for passport with ulterior motive.

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According to the learned counsel, in the summary of allegations, this had been so mentioned, but there is no evidence on the record that it had been done with ulterior motive.

7. Ulterior motive would a state of mind and ordinarily, it will be difficult to lead direct evidence in this regard. Ulterior motive, if any, has always to be adopted on basis of the *facts* ^x surrounding circumstances. Like in the case of adultery, direct evidence would rarely be available. Therefore, to state that on the facts of the present case, direct evidence should be forthcoming would be travesty of truth. It transpires that the applicant conducted the verification of the applications for passport and submitted a satisfactory report. While 8 out of 10 persons never lived at those addresses and against 2 others, it was mentioned that the addresses were not in existence. The inference, therefore, can always be drawn on preponderance of probabilities and was rightly so drawn. Resultantly, this particular argument which has been thought of by the learned counsel and put forward eloquently cannot be accepted.

8. In that event, the learned counsel urged that 4 witness had been cited, but the inquiry officer examined 5 witnesses. The argument

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proceeded on the premise that as per Rule 16 (viii) of the Delhi Police (Punishment & Appeal) Rules, 1980, (for short, "the Rules"), an additional witness other than the prosecution witness can be examined as a court witness. According to the learned counsel, only after a stage where the defence statement has been submitted by the applicant, such an additional witness as court witness can be examined. Furthermore, the inquiry officer can call a court witness only if he considers necessary for clarifying certain facts which have not already come by the evidence brought on the record. In this case, the applicant's learned counsel urged that the court witness had been called at a stage where even the charge had not been framed and the so called court witness had added to the evidence already adduced in the departmental enquiry.

9. Rule 16 of the Rules provides the procedure for departmental enquiries. Sub-rule (viii) to Rule 16 reads as under:-

"(viii) After the defence evidence has been recorded and after the accused officer has submitted his final statement, the Enquiry Officer may examine any other witness to be called "Court witness" whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross-examine all such witnesses and then to make supplementary final defence statement, if

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any, in case he so desires."

Perusal of the aforesaid would show that after the defence evidence has been recorded and after the accused officer has submitted his final statement, the inquiry officer may examine any other witness to be called "court witness" whose testimony is necessary for clarifying certain facts.

10. It has to be remembered that Rule 16 provides the procedure for departmental enquiries. Any deviation from the statutory rules would only give a cause if prejudice is caused. If no prejudice is caused, on the facts of a particular case, in that even, it would not be appropriate for this Tribunal to interfere.

11. Herein, the witness so examined was produced and the applicant had the right to cross examination. We were informed that the right was exercised at the appropriate time. This is not the case of the applicant that he raised objections. In this process when the witness was examined and the concerned person had the right to cross examination and no objection was raised, it is too late in the day to raise such a plea because as referred to above, we only reiterate that no prejudice as such has been caused to the applicant. At best, it could be described that procedural irregularities would not vitiate the inquiry.

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12. The last submission thereupon agitated at the Bar was that in the facts of the present case, the penalty awarded is disproportionate to the alleged dereliction of duty. To buttress the argument, the learned counsel referred us to a decision of this Tribunal in the case of **Ex.Asstt.Sub Inspector Anoop Singh v. Secretary, Ministry of Home Affairs & others** in OA No.1337/2001 rendered on 14.2.2002. There was an allegation that the said person had verified in one matter which subsequently turned out to be incorrect qua the address. This Tribunal held:-

"As the ld. counsel for the applicant has correctly said the penalty of removal almost amounts to dismissal. This to our mind, was clearly avoidable. Our decision is also fortified by the findings of a coordinate court in the Principal Bench in O.A. No.2526/1996 filed by Sohan Lal, decided on 31.5.2000 in identical circumstances, wrong verification of residence of applicants for passport. The Tribunal had, in the said O.A. quashed and set aside the orders of the disciplinary authority and the appellate authority and remanded the matter for reconsideration of the penalty commensurate with the gravity of the charge raised and proved against the applicant, but declining to substitute its judgement on the quantum of penalty, relying upon the decision of the Hon'ble Supreme Court in the case of B.C.Chaturvedi Vs. U.O.I, 1995 (8) SC 65 in the circumstances of the present case also, we feel that issuance of such a direction is felt justified and warranted."

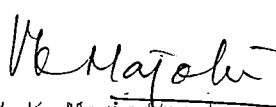
13. It must be stated that each case has its

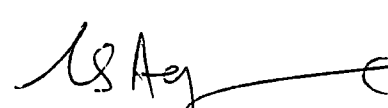
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own facts. Normally it is for the disciplinary authority to impose an appropriate penalty. Only in extreme cases where it is totally disproportionate to the alleged dereliction to duty, this Tribunal would interfere. The decision in the case of Anoop Singh (supra) was confined to the peculiar facts while herein on 10 occasions, the applicant is said to have deliberately given incorrect verification. The matter cannot be taken lightly and in the facts, it cannot be termed that the alleged dereliction of duty calls for a lenient view.

14. Resultantly, the present application being without any merit, must fail and is dismissed. No costs.

Announced.


(V.K. Majotra)
Member (A)


(V.S. Aggarwal)
Chairman

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