

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 3057/2001

New Delhi this the 9th day of April, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)  
Hon'ble Shri M.P. Singh, Member (A)

Nagendra Singh  
S/O Shri Roshan Lal  
H.No.F-77, Gali No.8,  
Khajuri Khas Colony,  
Delhi-110094

..Applicant

(None for the applicant )

VERSUS

1. Commissioner of Police,  
Delhi Police, Police  
Headquarters, I.P.Estate,  
New Delhi-1
2. Addl. Commissioner of Police,  
Delhi Armed Police,  
Delhi.
3. Deputy Commissioner of Police,  
Ist BN, DAP, Delhi.
4. Mr.M.S. Sangha, Enquiry Officer,  
Inspector Ist, BN, DAP Vijayghat,  
New Delhi.

..Respondents

(By Advocate Sh.George Paracken )

O R D E R (ORAL)

**(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))**

In this application, the applicant is aggrieved by the order issued by the respondents dated 20.10.1998 dismissing him from service, rejection of his appeal by the appellate authority by <sup>disr</sup> ~~their~~ order dated 5.2.1999 and the order of the revisional authority dated 6.6.2001 (Annexures A 1 to A-3) informing him that he will be at liberty to move to the Court against the order of punishment of the disciplinary authority and rejection order of appellate authority, if he so desires.

Yours

2. ~~has~~ None has appeared for the applicant even on the second call and none had also appeared for the applicant even on 4.4.2002. In the circumstances, we have carefully perused the pleadings and considered the submissions made by Shri George Paracken, learned counsel for the respondents. We have also perused the grounds taken by the applicant in the OA to challenge the vires of the aforesaid orders issued by the disciplinary authority and the appellate authority dismissing him from service, after holding a Departmental enquiry against him under the provisions of the Delhi Police Act, 1978 read with the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. The allegations in the charge against the applicant were that when he was detailed for duty at ~~Tax~~ Man Singh Hotel on 31.12.1996 in connection with the visit of V.V.I.P <sup>from</sup> ~~to~~ Israel, he did not deposit the service pistol and ammunition in the kot of main security line, after performing duties which arms and ammunition mentioned above were obtained by the applicant from the kot for performing the above duties. He was contacted at his residence and brought to main security line for enquiry and even on enquiry, he did not reveal about the whereabouts of the said pistol and ammunition. In this connection, a case FIR No.2/97 u/s 409 IPC was got registered at Police Station, <sup>a</sup> Chankypuri, New Delhi. For the above alleged acts, the applicant was charged ~~of~~ <sup>of</sup> grave misconduct, carelessness, dereliction in the discharge of his official duty and unbecoming of a police officer.

8:

3. One of the grounds taken by the applicant in the OA is that the respondents could not have simultaneously held Departmental proceedings and also file FIR in a criminal case proceeding. The respondents, on the other hand, have submitted that there is no bar in deciding the Departmental enquiry against the applicant when a criminal proceeding was also pending against him and accordingly, the Departmental enquiry against the applicant was re-opened from the stage, it was kept in abeyance and the Inquiry Officer had given him ample opportunity to defend his case. The applicant has also submitted that he was not given defence assistant during the enquiry proceedings and owing to this, he could not cross-examine the witnesses. This has also been refuted by the respondents who have submitted that the applicant had been informed at the initial stage that if he desires to take the assistance of another Police Officer who wants to render such assistance, he could do so with the approval of the Head of his Office. But he did not avail of this facility. When the Departmental enquiry was completed he has raised this plea as an after thought, as according to Shri George Paracken, learned counsel he had been adopting delaying tactics. It is relevant to note that these averments have not been denied by the applicant. It is further relevant to note from Tribunal's order dated 18.3.2002 that Shri Sachin Sood, learned counsellor for the applicant had appeared and had submitted that he does not wish to file any rejoinder to

the reply filed by the respondents. It is seen from the Inquiry Officer's report dated 12.8.1998 (Annexure A-18) that the applicant had been given ample opportunities to cross-examine the witnesses which he did not avail of. In the circumstances of the case it cannot be held that reasonable opportunity has not been afforded to the applicant to defend his case.

4. Another ground taken by the applicant is that despite his repeated requests, he was not allowed to report the unfortunate incident to the police by the duty officer and the night duty Inspector who were on duty at the Security line, which is the subject matter of the disciplinary proceedings. Noting the fact that the applicant himself was a Constable in Delhi police after he regained consciousness there is no reason why he could not have lodged his complaint at the Police Station. It is seen from the Inquiry Officer's report that the applicant had given a written defence statement which had been looked into by the competent authorities. We are satisfied that the relevant facts have been considered by the respondents, for example, that he left alone from the place of duty/function along with pistol and ammunition, why he did not inform the Police Station or any senior Police Officer or lodge complaint when he noticed that the incident had occurred. A perusal of the disciplinary authority's order shows that he has gone through the findings of the Inquiry officer, the statements of witnesses, representation submitted by the applicant and

9

other materials available on record of the DE file before coming to the conclusion that the charges stand proved. The applicant was also heard in person.

5. Regarding applicant's contention that the enquiry proceedings should have been kept in abeyance till the disposal of the criminal case which was pending in the Court, we find no merit in the same, having regard to the judgements of the Hon'ble Supreme Court in State of Rajasthan Vs. B.K.Meena and Ors (1996 (6) SCC 417 ), Kusheshwar Dubey Vs. M/s Bharat Cooking Coal Ltd.and Ors. (AIR 1988 SC 2118 ) and Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd.and Anr. (JT 1999 (2) SC 456). Therefore, in the facts of the case having regard to the aforesaid judgements of the Hon'ble Supreme Court his contention that the respondents could not have re-opened the disciplinary proceedings and his allegation that they were unfair and illegal are rejected. From a perusal of the relevant documents on record, we note that the applicant has been given reasonable opportunity to defend his case and it cannot be held that there is any violation of the principles of natural justice to warrant any interference in the matter. Applicant's allegation that the disciplinary authority has awarded the extreme penalty of dismissal from service, cannot also be accepted as the applicant was fully responsible for the safety of the arms and ammunition issued to him, <sup>held</sup> which charge has been/ proved is of a very serious nature. Hence, the punishment to dismiss the applicant was fully commensurate with the gravity of

8

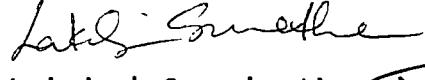
his mis-conduct. The appellate authority has also passed a reasoned and speaking order dealing with all the grounds taken by the applicant in his appeal. The reasons given by the appellate authority for his conclusion are also cogent which does not warrant any interference in the matter. It is settled law that the Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The Tribunal also cannot sit as a Court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings an an appellate Court to re-appreciate the evidence or arrived at its own conclusion and substitute the same <sup>for</sup> <sub>that</sub> arrived by the competent authority. (See the judgements of the Hon'ble Supreme Court in UOI Vs. Perma Nanda ( AIR 1989 SC 1185), Managing Director, ECIL Vs. B.Karunakar and Ors (JT 1993 (6) SC 1) and Government of Tamil Nadu Vs. A.Rajapandian (AIR 1995 SC 561).

6. Therefore, in the facts and circumstances of the case, the decision of the competent authority to dismiss the applicant is based on the evidence on record. In the present case, as mentioned above, the applicant has also not cared to refute the submissions made by the respondents that the relevant law and rule position in conducting the disciplinary enquiry against him have been <sup>3/</sup>

fully complied with and also the principles of natural justice by affording him an ample opportunity to defend his case. In the facts and circumstances of the case there appears to be no justification to interfere in the matter.

7. In the result, for the reasons given, the OA fails and is dismissed. No order as to costs.

  
(M.P.Singh )  
Member (A)

  
(Smt.Lakshmi Swaminathan )  
Vice Chairman(J)

sk