

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 434 of 2001

New Delhi, dated this the 15th October 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Jitender Kumar,
S/o Shri Rama Kant Tiwari,
Vill. & P.O. Nonva,
P.S. Dumraon,
District Bhojpur,
Bihar.

Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi,
through its Secretary,
5, Sham Nath Marg,
Delhi.
2. Addl. Commissioner of Police,
Armed Police, Police Headquarters,
Delhi.
3. Dy. Commissioner of Police,
II Bn., DAP, Kingsway Camp,
Delhi. Respondents

(By Advocate: Shri Ashwani Bhardwaj
proxy counsel for Shri Rajan Sharma)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the disciplinary authority's order dated 18.1.2000 (Ann. A); and the appellate authority's order dated 22.5.2000 (Ann. B). He seeks reinstatement with consequential benefits.

2. Applicant along with HC Satbir Singh were proceeded against departmentally, vide order dated 12.5.98, on the allegation that on the night intervening 29/30.12.96, while deployed for patrolling duty in Embassy Area, they robbed one Sanjay Kumar, an employee of Ashoka Hotel of his

wristwatch and Rs.190/- from his purse. Applicant and HC Satbir Singh were armed with pistol and rifle respectively. Applicant and HC Satbir Singh were later identified by Sanjay Kumar in the presence of SHO Chanakyapuri ~~and~~ at the Afghan Embassy, Chanakyapuri. Thereupon both of them were brought to Chanakyapuri P.S. where the Rs.190/- snatched from the complainant was recovered from HC Satbir Singh and the wristwatch was recovered from applicant. Thereafter HC Satbir Singh started manhandling the I.O. and threatened the duty officer staff by pointing ^a the pistol. He had also cocked the pistol and took away applicant, threatening the staff of the Police Station.

3. A criminal case bearing FIR No. 330 dated 30.12.96 u/s 392/34/506/186/353 IPC was registered at P.S. Chanakyapuri against HC Satbir Singh and applicant.

4. Applicant was dismissed from service under Article 311(2)(b) of the Constitution without holding a regular D.E., by order dated 7.1.97. He filed an appeal against the aforesaid dismissal order, which was rejected by order dated 8.5.97.

5. Thereafter he filed O.A. No. 1553/97 which was disposed of by order dated 24.3.98. By that order, the dismissal order dated 7.1.97 and appellate order dated 8.5.97 were set aside. Applicant was ordered to be reinstated and placed under suspension, and meanwhile respondents were given liberty to hold a departmental enquiry against applicant for his aforesaid misconduct in accordance with rules. The intervening period was to be decided after completion of the D.E.

6. Thereupon by order dated 27.4.98 applicant was reinstated in service, and thereupon by order dated 12.5.98 applicant (under suspension) was proceeded against departmentally.

7. The E.O. in his report dated 18.5.1999 held the charge as proved. A copy of the E.O.'s report was furnished to applicant on 21.12.99 for representation if any.

8. Applicant submitted his representation, on consideration of which, as also the other materials on record, and after giving applicant a personal hearing on 7.1.2000, the disciplinary authority, after agreeing with the E.O.'s findings, removed applicant from service, vide impugned order dated 18.1.2000. Applicant's appeal was rejected by appellate authority's order dated 22.5.2000 giving rise to the present O.A.

9. Meanwhile in the criminal case bearing FIR No. 330/96 HC Satbir Singh was convicted under Section 186-353-224 IPC while applicant was convicted u/s 224 IPC ~ New Delhi by the Addl. Sessions Judge, vide his judgment dated 1.6.2001 (copy on record).

10. We have heard applicant's counsel Shri Shyam Babu and respondents' counsel Shri Ashwani Bhardwaj.

11. At the outset Shri Shyam Babu contended that the impugned orders were liable to be quashed and set aside because the offence u/s 224 IPC, in regard to which applicant had been convicted in the criminal case bearing FIR No. 330/96, did not even form a part of the charge in the D.E. against applicant.

(10)

12. It was pointed out to Shri Shyam Babu that the offence u/s 224 IPC in regard to which applicant was convicted in the aforementioned criminal case, i.e. escape from lawful custody, very much formed a part of the charge against applicant, as was clear from that portion of the charge sheet where HC Satbir Singh is stated to have taken away applicant from P.S. Chanakyapuri after manhandling the I.O. and threatening to shoot him. Hence this ground fails.

13. It was next contended by Shri Shyam Babu that the I.O. in his report had not recorded any specific finding on the aspect of the charge relating to applicants escape of from lawful custody. A perusal of the charge sheet shows that it was prepared in narrative form, beginning with the ^{alleged robbery} ~~case~~ of Sanjay Kumar by HC Satbir Singh and applicant, and ending with ^{Satbir Singh} ~~HC~~ taking away applicant from P.S. Chanakyapuri. The I.O. in his report has concluded that the charge levelled against applicant have been proved beyond any doubt. From this it is apparent that the I.O. has found applicant guilty of all the material particulars contained in the charge, and, therefore, the escape from lawful custody cannot be excluded from the same. Even if any benefit accrues to applicant from non-mention of this particular aspect of the charge in the I.O.'s report, the same is covered in the A.D.J's judgment in the criminal

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case bearing FIR No. 330/96 convicting applicant of the offence u/s 224 IPC. Hence this ground also fails.

14. It was next contended by Shri Shyam Babu that as applicant had been acquitted of the offence of robbing Shri Sanjay Kumar in the criminal case, he was entitled to the benefit of that judgment in the D.E. and the impugned orders had, therefore, to be struck down. We must remember here that the order dated 18.1.2000 upholding the finding of the E.O. that the charge against applicant was established beyond doubt, was issued nearly 1 1/2 years before the judgment in the criminal case. It is well settled that the standard of proof required in a disciplinary proceeding is of a much lower order than what is required in a criminal case. While in the latter the guilt of the accused has to be proved beyond all reasonable doubt, in a disciplinary proceedings it is sufficient if the preponderance of probability points to the guilt of the delinquent. Applying this test to the materials on record, there is no doubt that applicant stands guilty as charged in the D.E. Hence this ground also fails.

15. Shri Shyam Babu also sought to invoke the provisions of Rule 11 (1) Delhi Police (Punishment and Appeals) Rules which provides that upon judicial conviction, a police officer would not be dismissed or removed from service till the results of the first appeal filed by him were known. It is, however, clear that aforesaid of Rule 11 (1) has no





application to the facts of the present case, because applicant was removed from service much before the judgment in the criminal case was delivered, convicting him u/s 224 IPC.

16. Lastly Shri Shyam Babu drew our attention to the Tribunal's order dated 26.3.2001 in O.A. No. 1118/2000 filed by HC Satbir Singh. By that order the enquiry was held to be vitiated because the approval of the Addl. Commissioner of Police u/r 15(2) Delhi Police (P&A) Rules had not been taken.

17. In the present case we note that applicant was dismissed from service in accordance with the provisions of Article 312(2) (b) of the Constitution, without holding a regular D.E. by order dated 7.1.97. A little before that date, an FIR had been instituted against him on 30.12.96. Applicant challenged his dismissal from service in O.A. No. 1553/97, as a result of which the dismissal order, as well as appellate order was set aside, and liberty was given to respondents to proceed with a D.E. in accordance with rules and instructions. Rule 15(2) Delhi Police (P&A) Rules provides that when a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official dealings with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held. In other words Rule 15(2) is

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attracted after a preliminary enquiry is held, whereby a choice is afforded to the departmental authorities either to register a criminal case or initiate a disciplinary proceedings. In the present case the D.E. was initiated in the background of the Tribunal's order quashing the earlier dismissal order passed under Article 311 (2)(b) of the Constitution, without holding a D.E. at a time when the criminal case against applicant was well under way. Under the circumstances Rule 15(2) Delhi Police (P&A) Rules has no application to the facts and circumstances of this particular case, and in the light of the Tribunal's order dated 24.3.98, the question of obtaining the Addl. Commissioner of Police's prior approval before issue of the Memo dated 12.5.98 does not arise. The Tribunal's aforesaid order dated 26.3.2001, does not lay down any law, so as to advance applicant's case.

18. In the result we find that this is not a case of no evidence; nor a case where the findings are arbitrary or perverse; or a case where the orders have been passed by an authority not competent to pass the same. Applicant was given full opportunity to defend himself, and the proceedings have been conducted in accordance with rules and instructions. Nothing has been shown to us to have prejudiced applicant in his defence during the conduct of the D.E.

19. The O.A. is, therefore, dismissed. No costs.

(Dr. A. Vedavalli)
Member (J)

(S.R. Adige)
Vice Chairman (A)

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