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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri M.P. Singh, Member (Adminv.)
Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.626/2001

New Delhi, this the 5th day of March, 2002

Sub-Inspector of Rajbir Singh
No.D/11
S/o Sh. Wazir Singh
r/o BB-70B (Purvi)
Shalimar Bagh
Delhi. ... Applicant
(By Advocate: Ms. Jasvinder Kaur)
Vs.

1. Joint Commissioner of Police
Northern Range, Delhi
Police Head Quarters
I.P.Estate
New Delhi.
2. Deputy Commissioner of Police
Central Distt. Delhi
Police Head Quarters
I.P.Estate
New Delhi. ... Respondents
(By Advocate: Ms. Sumedha Sharma)

O R D E R

By Shanker Raju, Member (J):

Applicant, a Sub-Inspector in Delhi Police, impugns an order of major penalty awarded by the disciplinary authority by an order dated 21.8.1998 which was affirmed by the Joint Commissioner of Police by an order passed on 24.2.2000. The applicant on the basis of an enquiry conducted by ACP on the complaint one Smt. Rajni Verma and Smt. Santosh Verma, found the involvement of the applicant and thereafter a departmental enquiry was ordered against him for the following misconduct:

"It is alleged against your, S.I. Rajbir Singh, No.D-11 that an enquiry was got conducted by ACP/CP Cell/C into the complaint filed by Smt. Rajni Verma and Smt. Santosh Verma r/o Dolwallan, Dehradun (UP), which revealed that a case vide FIR No.108/98 u/s 406/498-A IPC was registered at Police Station/Nabi Karim. On the complaint of Smt. Rajni Verma and on the recommendation of Nanak Pura Woman Cell, Mohinder Singh (husband of Rajni Verma) his sister & Mother

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were the accusers in the above said case. On 12.3.1998, the mother & sister of Mohinder Singh were arrested and produced in the court on 13.3.1998.

On 13.3.98, Sub-Inspector Rajbir Singh, No.D-11, who was posted at P.S.Nabi Karim visited Tis Hazari Court, Delhi alongwith the brother of Mohinder Singh to stand surity for the bail of the accuseds of the case. In the court, SI Rajbir Singh, No.D-11 threatened to the complainants with dire consequences and forced them to withdraw the case, failing which he threatened to implicate them in some false case, which shows that S.I. Rajbir Singh, No.D-11 is totally mixed up with the accused party of case FIR No.108/98 u/s 406/498-A IPC, P.S.Nabi Karim.

The above act on the part of S.I.Rajbir Singh, No.D-11 amounts to grave misconduct, negligence mis-use of official power and dereliction in the discharge of his official duties, which renders you liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

2. Enquiry Officer through his findings dated 16.7.1998 held the applicant guilty of misbehaviour and threatening Smt. Santosh and Smt. Rajni on 13.3.1998 at Tis Hazari Court as well as abusing and threatening Smt. Santosh at Dharmasala of Haridwara, UP. The finding has been agreed upon by the disciplinary authority and taking into consideration the charge of threatening and misbehaviour at Haridwar by the applicant, a major penalty of withholding of five increments for five years with cumulative effect has been imposed which was upheld in appeal.

3. Though, the applicant has taken several legal pleas to assail the impugned orders but, at the outset, by referring to Rule 16 (IX) of the Delhi Police (Punishment & Appeal) Rules, 1980 contended that the charge levelled against him both in summary of allegation as well as in the charge framed was threatening. Smt. Santosh as well as Smt Rajni at Tis Hazari Court but the Enquiry Officer has also proved the charge of threatening and abusing the

complainant at Dharmasala, Haridwar, UP which has been relied upon by the disciplinary authority to award a major punishment. Whereas the aforesaid charge was not incorporated in the charge framed and against which the applicant has not been accorded an opportunity to deny as well as a to defend against which, as mandated under Rule 16(IX) of the Rules ibid. In this view of the matter, it is stated that the applicant has been punished on extraneous charge without an opportunity to rebut the same. Which is in violation of principles of natural justice and doctrine of fair play.

4. On the other hand, the respondents in their reply, rebutting the contentions of the applicant stated that the applicant has been rightly held guilty of the charge and enquiry has been proceeded with in accordance with the rules and there is some evidence against the applicant in the enquiry, the Court has no jurisdiction to re-apprise the evidence in judicial review. It is also stated that due to the serious misconduct, the applicant has been rightly punished after according him an opportunity at every stage to defend.

5. We have carefully considered the rival contentions of the parties. From the perusal of the summary of allegations as well as the charge framed against the applicant, we do not find any allegation levelled against him or charge framed pertaining to abuse and threat extended to Smt. Santosh Verma at Dharmasala, Haridwar, UP. The aforesaid charge has been proved against the applicant by the Enquiry

Officer. The disciplinary authority while imposing a major punishment has also taken into consideration. To award a major punishment, as provided under Rule 16(IX) ibid in such an eventuality when enquiry establishes charge different from those originally framed, the enquiry officer has to record findings on such charge only after the accused officer has admitted the facts constituting them or he has been afforded an opportunity to defend against it. Nowhere from the record it is established that the applicant has been given an opportunity to rebut such charge or the same was put to him and against which the applicant has been afforded a reasonable opportunity. This, to our mind, is contrary to the Rule 16(IX) ibid and the applicant has been held guilty and punished on a charge which has not been put to him and against which he has been denied a reasonable opportunity to defend. This cannot be countenanced as the procedure adopted is contrary to the principles of natural justice and fair play, the applicant has been prejudiced by such an action of the respondents. The impugned orders passed are not legally sustainable.

6. In the result, the OA is partly allowed. Impugned order of punishment as well as the appellate orders are quashed and set-aside. However, this would not preclude the respondents from proceedings further against the applicant in accordance with the rules and the laid down procedure and having regard to the observations made above. No costs.

S. Ram
(SHANKER RAJU)
MEMBER(J)

M.P. Singh
(M.P. SINGH)
MEMBER(A)

/RAO/