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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1110/1999

New Delhi, this the 07th day of (March,), 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (ADMN)

Inspector Surjeet Singh
No.D-1/465,
S/O Sardar Jangir Singh,
aged about 50 years presently posted
at Old Police Lines,
Rajpur Road, Delhi.
R/O 9/1104, near New Post Office,
Gandhi Nagar, Delhi-31.

..Applicant.

(By Advocate: Shri Sachin Chauhan)

VERSUS

1. Union of India
through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Lt. Governor,
Raj Niwas Marg,
Rajpur Road, Delhi-54.
3. Commissioner of Police,
Police Headquarters,
I.P.Estate, MSO Building,
New Delhi.
4. Sr. Addl. Commissioner of Police,
Planning & Implementation,
IP Estate, MSO Building,
New Delhi.

..Respondents

(By Advocate: Mrs. Sumedha Sharma)

O R D E R

By Hon'ble Shri S.A.T. Rizvi, M (A):-

Following the appearance in the Indian Express dated 10.11.1991 of a news item captioned "Encroacher Flourish as Police Look On", the Addl. Commissioner of Police, Delhi made a preliminary enquiry into the matter which led to a charge being framed against the applicant in this OA in the following terms:-

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"CHARGE"

You, Inspector Surjeet Singh No, D-I/465, are hereby charged that some land grabbers encroached upon public land in Karkardooma village on 20.8.91 with the connivance of the local police and in order to cover up your malafide intents, you as the then SHO/Anand Vihar 20.8.91 in the Police Station Roznamcha mentioning that the then DCP/East had informed you on telephone that until the land owner did not come and make a complaint regarding construction, the same should not be interfered and at the same time verification of the NOC should continue. Subsequently on 21.8.91 you sent a report referring to a No Objection Certificate dated 15.7.91 from Tehsildar whereas no reference was made about the DD entry No.10-A lodged by you on 20.8.91. Following to this, DCP/East issued instructions on 27.8.91 in which he referred to directions repeatedly given by him that it was the responsibility of the SHO to prevent unauthorised encroachments on public land. You were also directed by the then DCP/East to personally verify the facts and act accordingly. However you showed gross in-subordination and did not carry out the orders of the DCP but only deputed an S.I. to verify the facts. On 10.10.91 you sent another report regarding the incident of encroachment without making any reference to your previous report dated 20.8.91. Thereafter the then DCP/East had personally taken up the matter with the Vice Chairman, D.D.A.

2. You further did not make efforts to verify land in question bearing Khasra No.7450/953/40 of Mandawali Fazalpur as to whether the same was in the name of Shri Ram Lal Shiv Charan since 1954-55 and there is nothing on record to indicate any legitimate link of Sh. Ram Lal with encroachers namely S/Shri Kishan Kumar Shyam Lal, Govind Ram, Abdul Sattar and Rattan Singh or otherwise. You also could not establish that the land being encroached upon by the above five individuals was the same land bearing Khasra No.7450/953/40 of village Mandawali Fazalpur or otherwise. It is also a matter of record that Shri Kulbir Singh Patwari wrote a letter to SHO/PS Anand Vihar on 4.9.91 which was received in Police Station Anand Vihar on 5.9.91 with a mention that Gulshan Mahajan and others were encroaching upon DDA land and Shri Gainda Lal Sharma, Kanungo had also

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given a complaint in the Police Station Anand Vihar on 4.10.91 regarding encroachment of land in Khasra No.528 but both these letter do not figure in your report dated 10.10.91. You apparently concealed the receipt of these letters for ulterior motive. It is also a matter of record that earlier on 13th Jan, 1991 an unsuccessful attempt was made to upon the same land by some of the same encroachers who were arrested under D.P.Act.

3. You as SHO/Anand Vihar also connived with the land grabbers in order to get the public land encroached upon and to cover up, you recorded a bogus entry in daily diary of Police Station and further sent a factually incorrect reports and also tried to give some legitimacy to the incident by referring to the Khatuni and a letter dated 15.7.91 from the A.D.M. (LA) as NOC whereas nomenclature as NOC was nowhere used in the letter.

4. You further registered a case FIR No.180/91 u/s 447 IPC dated 13.11.91 against encroachers including Gulshan Mahajan on the report dated 4.11.91 of Sh. Gaipta Lal Sharma, Kanungo only after ACP/ Vivek Vihar called your explanation vide letter No.5202-03/R-ACP/V.Vihar, dated 13.11.91. Earlier no case was registered on the complaints of Patwari dated 4.9.91 and the Kanungo dated 4.10.91. You, in order to further delay, registration of the proper case marked the Kanungo's complaint of 4.11.91 and the criminal case was only registered against the encroachers after inordinate delay on 13.11.91, on intervention of senior officers.

5. The above acts of omission and commission on your part, amounts to gross misconduct, lack of integrity and dereliction of assigned Government duties which is in violation of Rules 3(i) (ii) and (iii) of CCS(Conduct) Rules, 1964 and render you liable for punishment under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 as well as Section 21 of Delhi Police Act, 1978."

2. Earlier, the applicant was placed under suspension on 27.4.1992 even before the departmental enquiry was ordered against him by the Addl. C.P. on

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9/22.6.1992. As usual, the summary of allegations was also served on the applicant along with lists of documents and the witnesses. A DCP was appointed as Enquiry Officer who gave his report/findings to the effect that only a part of the charge had been proved. The disciplinary authority/Addl. C.P. disagreed with the findings of the EO and recorded a note of dissent which was served on the applicant along with a copy of the findings recorded by the EO. This was on 20/22.9.1995. The same was replied to by the applicant. His explanation was not found satisfactory and the disciplinary proceedings concluded in disciplinary authority's order dated 27.9.1996/1.10.1996 by which the pay of the applicant was reduced by two stages from Rs.2375/- to Rs.2240/- in the time scale of pay for a period of two years with immediate effect and it was directed that the applicant will not earn increment of pay during the period of reduction and further that on the expiry of the period of reduction, the reduction will have no effect of postponing his future increments of pay. The period of suspension from 27.4.1992 to the date of the aforesaid order, i.e., upto 27.9.1996 was ordered to be treated as a period not spent on duty. Further, nothing more than what had already been paid to the applicant by way of subsistence allowance was to be paid to him for the period he remained suspended. Not happy with this order, the applicant went in appeal. The appellate authority by his order dated 16/21.10.1997 upheld the order passed by the disciplinary authority except that the period of the applicant's suspension was allowed to be treated as spent on duty. The aforesaid

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order was carried in revision. The Lt. Governor of Delhi who is the revisional authority by his order dated 15.2.1999/4.3.1999 declined to interfere in the order passed by the appellate authority. Aggrieved by the aforesaid orders passed by the disciplinary, appellate and the revisional authorities, the applicant has filed the present OA.

3. The main issue agitated before us is with regard to non-observance of the principles of natural justice by the disciplinary authority and passing of an order by him which could be termed as a non-speaking order devoid of any reasoning. The learned counsel appearing for the applicant has contended that the disciplinary authority has not disclosed any plausible reason as to why he found it fit to disagree with the approach adopted by the EO and his (EO's) mode of arriving at a finding with regard to charge/charges. We find it convenient to reproduce below the note of disagreement recorded by the disciplinary authority:-

"DISAGREEING NOTE

The undersigned has gone through the findings of the Enquiry Officer in the light of evidence on record and the facts and circumstances of the case. The Enquiry Officer has tried to divide the charge/charges into parts and then tried to come to a finding that some part of the charge is proved while some other part is not proved. The undersigned disagrees with this approach and mode of coming to a finding with regard to charge/charges. The undersigned takes the view that a particular charge has to be read as a whole and then a finding is to be recorded whether the charge is proved or not on the test of "preponderance of probability of evidence." In the state of evidence on record in this particular case and based

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on the test of "preponderance of probability of evidence", the undersigned takes the charge/charges framed in this departmental enquiry as proved against the delinquent Inspector Surjeet Singh, No.D-I/465 and to this extent the undersigned disagrees with the conclusion/discussion of evidence by the Enquiry Officer to come to his findings in the Enquiry Report." We find that the disciplinary authority/Addl. C.P. took the view that a particular charge has to be read as a whole and thereafter a finding is to be recorded by following the test of "Preponderance of Probability of Evidence". The disciplinary authority found that by applying the aforesaid test and by reading the charge as a whole, instead of dividing the same into parts, the charge would stand proved and to this extent, the disciplinary authority disagreed with the discussions of evidence by the EO and the conclusions reached by him."

4. The learned counsel for the applicant has argued that by recording the note of disagreement in the manner he has done, the disciplinary authority has deliberately prevented the applicant from having a peep into his mind. According to him, the disciplinary authority has not made any attempt to show as to how it was bad on the part of the EO to divide the charge into various parts for the purpose of arriving at definite findings in regard to each part. The disciplinary authority has also desisted from showing as to how the parts of the charge not found to have been proved by the EO are found to have been proved by him. He has also drawn our attention to the detailed order passed by the disciplinary authority which again, according to him, does not evaluate nor analyse the evidence.

5. We have carefully perused the summary of allegations as well as the memo of charge and find that

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the allegations listed in the charge memo are not necessarily connected to each other nor do they arise from one single event. Thus, according to us, the EO has done the right thing by dividing the allegations into several parts so as to find out as to which of the allegations could be proved on the basis of available evidence. What seems to have escaped the attention of the disciplinary authority is that the first four paras of the charge memo simply list out the events and contain allegations against the applicant whereas the fifth para thereof which is the last para of the charge memo, contains the charge/charges levelled against the applicant. These are gross misconduct, lack of integrity and dereliction of assigned Govt. duties violating Rules 3 (i) (ii) and (iii) of C.C.S. (Conduct) Rules, 1964 rendering the applicant liable for punishment under the Delhi Police (Punishment & Appeal) Rules, 1980. It is not difficult to see that these easily merge with each other thereby constituting a whole. The question of breaking the charges into various parts does not and cannot, therefore, arise. The EO has logically enough divided the allegations contained in the first four paras of the charge memo into nine parts. Five of these parts are found by him to have been proved against the applicant whereas the remaining four, according to the EO, have not been proved on the basis of available evidence. The allegations which have not been proved are the following:-

"1. That Insp. Surjeet Singh while sending his report dated 21.8.91 did not make any mention about DD No.10A dated 20.8.91.

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2. That Insp. Surjeet Singh failed to personally verify the facts and act accordingly as directed by DCP/East.
3. That Insp. Surjeet Singh failed to take note that on 13.1.91 an unsuccessful attempt was made to encroach upon the same land by some of the same encroachers who were encroaching on 20.8.91.
4. That Insp. Surjeet Singh only registered a case FIR No.180/91 u/s IPC P.S. Anand Vihar after inordinate delay only on 13.11.91."

6. The learned counsel appearing for the applicant has vehemently argued that the order dated 27.9.1996 passed by the disciplinary authority is a totally non-speaking order. To assist us, the learned counsel has read out the entire order. We find that roughly half of the aforesaid order consists of a description of events connected with the disciplinary proceedings carried upto the stage of recording of the note of disagreement by the previous Addl. C.P./disciplinary authority and the conclusion reached by the said authority without evaluating the evidence that the charges levelled against the applicant stood proved. Immediately thereafter, the disciplinary authority who is a senior Addl. C.P., whereas the previous disciplinary authority was an Addl. C.P., has gone on record in the final order passed by him to say that the allegations enumerated therein had been established. We find that the allegations listed by the disciplinary authority are the very same allegations which constitute the charge/charges against the applicant. Towards the end of the order, the disciplinary authority has found the applicant guilty of certain acts of commission and omission. But here again, the aforesaid authority has

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not discussed the evidence on the basis of which the applicant has been found guilty of the same. The evidence available has not been evaluated nor any conclusion has been drawn by the disciplinary authority in the light of the detailed evidence recorded by the EO. We also find that the disciplinary authority has not, at any stage, while passing his orders, tried to show as to how the allegations not found proved by the EO were found proved by him. The said authority has also not, at any stage, pointed out the extent to which he agreed with the EO. He seems to have relied on the note of disagreement recorded by the previous disciplinary authority entirely without spelling out his own reasons for the same. From a careful reading of the aforesaid note of disagreement, we find that the previous disciplinary authority as well as the disciplinary authority who has passed the impugned order have all along felt that every thing in these proceedings has gone wrong just because the EO has divided the allegations forming part of the charge/charges against the applicant into various parts and that as soon as one tried to read the allegations as a whole, i.e., without dividing them into parts, and also simultaneously applied the test of preponderance of probability of evidence, the charge/charges against the applicant would be seen to have been proved beyond any doubt. This need not be so, according to us, unless the entire evidence made available during the course of the enquiry is evaluated and analysed so as to reach firm conclusions in respect of each of the allegations contained in the charge memo. Thus, there is great deal of substance in the plea raised by the learned counsel

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that the order passed by the disciplinary authority is a non-speaking order.

7. With the help of the learned counsel, we have also gone into the orders passed by the appellate as well as the revisional authorities. Both these orders also essentially suffer from the defect which we have pointed out in the preceding paragraph in regard to the order passed by the disciplinary authority. We also find that the appellate authority has listed out the various pleas advanced by the applicant but has not bothered to provide answers to most of those pleas and has more or less abruptly concluded that, excepting in regard to the treatment of the period of suspension, the order of the disciplinary authority could not be interfered with.

8. We have further noticed that action in the present case was taken in hand by the respondents after the aforesaid news item appeared in the Indian Express and in the light of the preliminary enquiry immediately thereafter made by the Addl. C.P. The said officer must have reached certain adverse conclusions after conducting the preliminary enquiry and the respondents have obviously decided to proceed further in the matter in the light thereof. The learned counsel has contended that since the preliminary enquiry was made by a senior officer (Addl. C.P.) who is the disciplinary authority also, the EO, who is a DCP and, therefore, subordinate to the disciplinary authority, has tried his best to prove that the charges levelled against the applicant stood proved. The Addl. C.P./disciplinary authority who had

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ordered initiation of departmental enquiry against the applicant, had also, at one stage, after due consideration, thought it fit to reinstate the applicant. Meanwhile, the aforesaid officer was shifted elsewhere. His successor, however, decided otherwise and thus, the suspension of the applicant was continued. The learned counsel for the applicant has drawn our attention to the instructions which provide for periodical review of suspension cases so as to reinstate suspended officials as and when found necessary and in public interest. The results of such periodical review have to be submitted by the disciplinary authority to the higher authorities. No such action was taken by the respondents. He has also argued that suspension is to be resorted to only when there is a *prima facie* case permitting an assumption that in the event of the charge being found proved, a major penalty in the form of dismissal, removal or reduction in rank will have to be imposed. According to him, the present case could never be regarded as one in which a *prima facie* case warranting dismissal etc. could be said to have been made out against the applicant. In the event, he has been penalised no doubt with a major punishment but the same is different from the major penalties calling for suspension of charged officials. According to the learned counsel, in the present case, the applicant was placed under suspension on 27.4.92 much before a departmental enquiry was ordered against him and roughly three years before the applicant was formally charged on 1.2.1995. All this has happened, according to the learned counsel, after the applicant has, after making due effort, registered a case against the

encroachers, some of whom were even arrested on 13.11.91. Thus, the matter arising from the news item in question had in a way concluded in November, 1991 itself by which time all the necessary action regarding encroachment had been taken. In the circumstances, according to the learned counsel, there was no need at all to proceed against the applicant and in any case not so much after the event. The applicant, according to the learned counsel, had joined as SHO, Anand Vihar on 28.6.1991 and had completed less than five months when the aforesaid news item was published. He was shifted out from Anand Vihar on 28.11.1991, i.e., soon after the desired action in regard to encroachment had concluded.

9. The learned counsel appearing on behalf of the applicant has also contended that the news item in question, which has led to the present departmental proceedings had, as a matter of fact, raised sweeping and general allegations against all the SHOs of the East District as well as higher officers of Police working in the said District. No specific allegation was made in that news item against the applicant. Despite this, the respondents have decided to proceed against him alone without any regard to the fact that he had assumed the charge of Anand Vihar Police Station only four months before the said news item appeared in the Indian Express. Not only this, the applicant was unnecessarily placed under suspension and was kept on suspension for an unduly long time without any review by the concerned authorities in accordance with the relevant Govt. instructions. His reinstatement, though favourably considered by the same

Addl. C.P. who had ordered departmental enquiry against him, was not permitted and this was, according to the learned counsel, entirely due to lurking bias against the applicant and due to the influence of the higher authority who had conducted the preliminary enquiry in this case. While emphasizing an important aspect of breach of the principles of natural justice, the learned counsel has also pointed out that in the list of witnesses attached to the summary of allegations, the gist of evidence, most of the listed witnesses were supposed to give, were not indicated. This way also, the defence of the applicant stood prejudiced during the course of the departmental trial.

10. The learned counsel has also drawn our attention to the various parts of the report furnished by the EO in his effort to show that enough evidence was not available with the EO to reach the conclusion that certain parts of the allegations against the applicant stood proved. We are not inclined to go into this question. We are prevented from re-appraising the evidence and cannot, therefore, go into the details of evidence so as to reach our own conclusions in respect of each allegation. We are here to see if the respondents have followed the procedure properly and adequately and whether there has been a significant breach of the principles of natural justice at any stage during the course of the departmental trial. We are also required to see that if the respondents have applied their mind properly and carefully and have passed speaking and reasoned orders. We are also required to see if there has been any

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malafide or bias affecting the proceedings. We have in the preceding paras already seen that the orders passed by the disciplinary authority are non-speaking orders and further that the order passed by the appellate authority not only suffer from the same defect but also fail to show application of mind insofar as the various pleas raised by the applicant are concerned. Like-wise and for the same reasons, the order passed by the revisional authority also cannot be sustained.

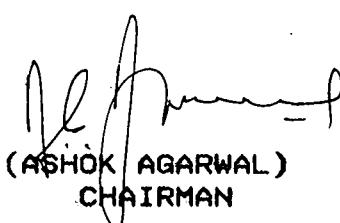
11. For all the reasons mentioned in the preceding paras, the OA succeeds and the orders passed by the disciplinary, appellate and the revisional authorities are quashed and set aside. The applicant will be entitled to all the consequential benefits. Simultaneously, his name will also be removed from the secret list of officers of doubtful integrity with effect from the date from which he was placed on the aforesaid list.

12. Present OA is allowed in the aforesated terms without any order as to costs.



(S.A.T. RIZVI)
MEMBER (A)

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(ASHOK AGARWAL)
CHAIRMAN