

Central Administrative Tribunal
Principal Bench

O.A. No. 1384 of 1999

New Delhi, dated this the ¹²9th July, 2001

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

Head Constable Roshan Singh,
S/o Shri Ishwar Singh,
Working in Delhi Police
under DCP (Security),
Delhi Police
R/o B-7/153, Type I,
Pitam Pura, Delhi-110034.

.. Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. of NCT of Delhi,
through the Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.
2. Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi-110002.
3. Addl. Commissioner of Police (Armed Police),
Police Headquarters,
I.P. Estate, New Delhi-110002.
4. Dy. Commissioner of Police,
VIth Battalion,
D.A.P., New Delhi.
5. Shri V.P. Dahiya,
Enquiry Officer,
VIth Battalion,
D.A.P., New Delhi.

.. Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the E.O's report dated 29.9.97 (Annexure A-1); the disciplinary authority's order dated 21.11.97 (Annexure A-2) and the appellate authority's order dated 8.9.98 (Annexure A-3). He

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prays for restoration of his pay with consequential benefits.

2. Applicant was proceeded against departmentally vide order dated 6.5.97 (Annexure A-5) on the allegation that while posted in security line he demanded and accepted Rs.20,000/- from one Rajesh Kumar S/o Ram Niwas on the assurance that he would get the latter enlisted in CRPF, but he neither got Rajesh Kumar enlisted nor returned the money to him, and thus extorted money from ^{an} ~~one~~ innocent member of the public by using fraudulent means and abusing his official position.

3. The E.O. in his findings dated 29.9.97 ^{that} held _L there was no doubt that the complainant Rajesh Kumar had paid the money to Hd. Const. Chander Bhan in the presence of one Chanan Singh and later on the money was allegedly paid to applicant for onward transmission to one Rohtash Singh for the purpose of recruitment. The money was returned to one candidate, but in respect of complainant Rajesh Kumar, applicant returned only Rs.5000/- and the remaining sum i.e. Rs.15,000/= was not returned. The E.O. further held that though applicant did not get the money directly, he indulged in such a deal between the parties and hence the charge against him stood proved.

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4. A copy of the findings was served on applicant on 14.10.97 for representation, if any. Meanwhile applicant who had been suspended on 5.3.97 was reinstated on 1.9.97.

5. Applicant submitted his representation on 6.11.97 upon consideration of which, as also the other materials on record, the disciplinary authority after agreeing with the E.O's findings, by impugned order dated 21.11.97, reduced applicant's pay by four stages permanently for a period of four years entailing reduction in his pay from Rs.3795/- to Rs.3455/- per month w.e.f. the date of issue of the order during which applicant would not earn increments of pay. The suspension period was ordered to be treated as period not spent on duty.

6. Applicant's appeal was rejected by impugned appellate order dated 8.9.98 giving rise to the present O.A.

7. Applicant's counsel Shri Gupta pressed two grounds in the O.A. Firstly it was stated that the E.O. had himself in his findings stated that the money was 'allegedly' paid to applicant, which implied that the charge of demand and acceptance of money from the complainant by applicant was not established. Secondly it was contended that the E.O. by cross-examing the witnesses had acted as both prosecution and judge which vitiated the disciplinary

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proceedings. Reliance was placed on the CAT, P.B. ruling in O.A. No. 455/96 Pradeep Kumar Vs. Union of India & Others decided on 19.1.2000.

8. In our considered opinion merely because the E.O. has used the word 'alleged' to qualify the payment of money to applicant on the assurance given by him that he would get Rajesh Kumar appointed to CRPF does not negate the fact that the charge stands proved on the basis of the statements of witnesses and the circumstantial evidence. Hence this ground does not assist applicant.

9. As regards the second ground, we note that neither in the applicant's appeal petition to the Appellate Authority, nor indeed in the grounds taken in the present O.A. has applicant specifically taken this ground to challenge the findings in the disciplinary proceedings. It is, therefore, clear that this second ground is an after thought and lies outside the pleadings. Applicant has not established that any prejudice was caused to him by the E.O. putting questions to the witnesses during the course of the proceedings. Indeed if any prejudice had been caused to applicant, he would surely have raised this issue during the course of the D.E. itself, or in his representation against the E.O's findings made to the Disciplinary Authority or indeed in his appeal, but at none of these stages was this point taken.

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10. Furthermore Rule 16(v) Delhi Police (Punishment & Appeal) Rules itself permits the E.O. to put questions to witnesses to clear ambiguities or to test their veracity. A perusal of the questions put by the E.O. to the witnesses in the present D.E. reveals that these questions were primarily to clear ambiguities or to test their veracity. It is no doubt true that in his report, the E.O. has described the questions put by him to the witnesses as cross-examination by himself but we have to go by the substance of the questions put and not by the manner they have been described and viewed in this light it ^{can} ~~may~~ not be said that the disciplinary proceedings suffer from any infirmity serious enough to warrant judicial interference.

11. In Pradeep Kumar's case (supra) the Bench intervened because inter alia it held that the type of questions put was to elicit answers which would fill up the gaps in the evidence, but in the present case it is clearly not so, and hence the ruling in Pradeep Kumar's case (supra) does not assist applicant.

12. In this connection it cannot be denied that in disciplinary proceedings the E.O. performs the role of a judge, and, therefore, cannot combine within himself the role of a prosecutor also, because such a combination of roles would vitiate the entire proceedings, being violative of principles of natural

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justice. On the other hand, as pointed above, Rule 16(v) D.P. (P&A) Rules itself permits the E.O. to put questions to witnesses to clear ambiguity or test their veracity, and such questions put to the charged officer cannot be deemed to be violative of the principles of natural justice.

13. In this connection in State Bank of Patiala Vs. S.K. Sharma JT 1996 (3) SC 722 the Hon'ble Supreme Court has held that justice means justice between both the parties, and the interests of justice equally demand that the guilty should be punished. Technicalities and irregularities which do not occasion failure of justice should not be allowed to defeat the ends of justice. Principles of natural justice, are but the means to achieve the ends of justice, and cannot be perverted to achieve the very opposite end for that would be a counter-productive exercise.

14. In the light of the above, we see no good grounds to warrant judicial interference in this O.A., It is accordingly dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige

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

karthik