CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(6)

O.A.No.181/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 23rd day of October, 2000

Asstt. Sub-Inspector Tilak Ram
No.224/N.E.S/o Sh.....
r/o Village - Bassi, P.O. & P.S.-Khekra
Distt - Meerut, UP. .. Applicant

(By Shri Shankar Raju, Advocate)

Vs.

1. Union of India
through Its Secretary
Ministry of Home Affairs
North Block
New Delhi.

2. Commissiner of Police
Police Head Quarters
I.P.Estate
M.S.O.Building
New Delhi.

3. Addl. Commissiner of Police
Northern Range
Police Head Quarters,
I.P.Estate
M.S.O.Building
New Delhi.

4. Dy. Commissiner of Police
Central District
Darya Ganj
New Delhi. .. Respondents

(By Shri Ajay Gupta, Advocate)

O R D E R (Oral)

By Justice V. Rajagopala Reddy:

Heard the counsel for the applicant and the respondents. While the applicant was working as ASI in Delhi Police, a departmental enquiry has been held on the allegation that he was unauthorisedely absent for the period 3.7.1992 to 5.8.1992, he was involved in a criminal case FIR No.161/92 dated 3.7.1992 under Section 342, 377 and 323 - IPC, Police Station Welcome, Delhi and that he did not inform the department about his involvement in the criminal case

which was a serious lapse on his part. The departmental enquiry has been conducted and the enquiry officer found that the charges one and two have been proved. The third charge namely not informing the department regarding the involvement in a criminal case was not proved. The disciplinary authority having agreed with the findings of the enquiry officer imposed the punishment of dismissal from service by the impugned order dated 4.6.1993 which has been upheld by the appellate authority in its order dated 17.6.1997. The order of dismissal is under challenge in this OA.

2. The learned counsel for the applicant, Shri Shankar Raju contends that the enquiry was not inconformity with the rules and that there is no evidence on record to support the allegations made against the applicant. It is also contended that the criminal court acquitted the applicant for the charges under section 342, 377, 323 IPC and hence he was entitled to be exonerated for the allegations based upon this FIR. It is further contended that though the enquiry officer had exonerated the applicant from the third charge, the disciplinary authority passed its order on the premise that all the said allegations have been proved against him. The disciplinary authority having infact disagreed with the findings of the enquiry officer the applicant should have been given reasonable opportunity for making representations for his disagreement but the said procedure has not been followed by the disciplinary authority. It is lastly contended that the enquiry

officer has not considered the plea of the applicant in defence and the evidence of defence witnesses in coming to his conclusions.

3. On the other hand, the learned counsel for the respondents, Shri Ajay Gupta, contesting the arguments advanced on behalf of the applicant vehemently argues that there is substantive evidence on record in support of the charges and the impugned order was passed after following due procedure. Hence, there is no warrant to interfere with the impugned order.

4. We have given careful consideration to the arguments advanced by either side. The charges levelled against the applicant are as under:

> "Briefly the allegations the defaulter were that the the defaulter absented from duty w.e.f. 3.7.92 to 5.8.92. During the period of absence, the defaulter was involved in a case U/S 342/377/323 IPC P.S.Welcome which was a disgraceful act. The defaulter also failed to inform the department about his involvement in a criminal case which is again a serious lapse."

5. A perusal of the enquiry officer's report shows that out of the three articles of charge levelled against the applicant, the third article was not established by the enquiry officer. This article of charge pertains to the intimation regarding the involvement in the criminal case to the department. The disciplinary authority however in awarding the punishment in the impugned order relies upon the third article of charge also. He proceeded as if it was proved during the enquiry.

6. In fact, it was stated by the disciplinary authority that all the three charges have been proved in the enquiry, which is a patent error. It is no doubt true that the disciplinary authority could disagree with the findings of the enquiry officer but the applicant should be given an opportunity to make his representation against the disagreement. However, no such procedure has been followed. Without doing so the order has been passed considering all the allegations have been proved against the applicant during the enquiry. Thus there is a legal infirmity in the order of the Tribunal as regards the third article of charge.

7. As regards the second article of charge of involvement, in the criminal case under Sections 377, 342, and 323 IPC, after a regular trial, acquitted the applicant of these charges by the judgment dated 19.8.1996 in the criminal case No.213/93 by the Metropolitan Magistrate, Karkardooma Courts, Delhi. The enquiry officer however found that this charge has been proved in the enquiry. In support of this finding, he found that there was only the evidence of PW-II, who was working as Duty Officer who stated that on the basis of the complaint made by the victim of the unnatural offence the case was registered and the FIR has been issued. There was no other evidence on behalf of the prosecution. The applicant examined in his defence DW-I who is the complainant. His deposition was that he was pressurised by certain people to make the false complaint against the applicant as regards the above offences. His evidence has not been accepted. Thus in the absence of any

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other evidence on record, the finding based upon the FIR which is not a substantive evidence cannot be sustained. We are aware of the limitation of our jurisdiction. We cannot interfere with the findings if there is any evidence in support of the same. But, there is no evidence nor an iota of it as FIR is the record of the allegation. That apart in the criminal case as he was acquitted for the same charge, the enquiry officer could not have found him guilty of the charge unless there is a substantial evidence on record in the enquiry. Thus, articles two and three of the charge should be held as not proved.

8. However, regarding article number one i.e., unauthorised absence, the enquiry officer relying upon the evidence PW-I and the documentary evidence on record found the allegation as true which cannot be interfered by the Tribunal. The learned counsel for the applicant however contends that the enquiry officer has not taken into consideration the plea made by the applicant and the medical certificates filed along with the defence statements. We are unable to accept this contention. The enquiry officer has clearly noticed that the applicant had filed his defence statement and as stated supra he has also considered his defence evidence. But in view of the acceptable evidence of PW-I, we cannot interfere with the finding in the exercise of judicial review jurisdiction.

9. The OA partly succeeds. The impugned order of the disciplinary authority, which was passed on the premise that all the allegations were proved is

wholly vitiated and it has, accordingly, be set aside. But as we held as article No.1, i.e., the applicant's absented from duty w.e.f. 3.7.92 to 5.8.92, has been rightly proved, the matter is remitted and the disciplinary authority shall pass afresh order treating that the only article No.1 has been proved. This order shall be passed within a period of two months from the date of receipt of a copy of this order. The OA is accordingly disposed of. No costs.

(GOVINDAN S. TAMPI)
MEMBER(A)

(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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