

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2274/99

New Delhi, this the 19th day of December, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S. Tampi, Member (Admn)

In the matter of :-

Ct. Surender,
S/o Sh. Mahavir Singh
R/o VII Bn. Barraely,
PTS, Malviya Nagar,
Delhi.

...Applicant.

(By Advocate : Sh. Ajesh Luthra)

V E R S U S

1. Union of India
Through Secretary
Ministry of Home Affairs,
North Block,
New Delhi
2. The Addl. Commissioner of Police
(Armed Police)
N.P.L., Kingsway Camp,
Delhi - 110009.
3. The Deputy Commissioner of Police,
VIIth BN. DAP,
Delhi Police
Delhi.

(By Advocate : Mrs. Sumedha Sharma)

O R D E R (ORAL)

Justice V.Rajagopala Reddy,

A departmental enquiry was held against the applicant who is a Constable and another, a Head Constable Anant Ram, on the allegations that they had demanded an amount of Rs.25,000/- (Rs. twenty five thousand) as \uparrow illegal gratification, but finally accepted Rs. 10,000/- for registering the case under sections 91 & 93 Delhi Police Act, on the basis of the complaint given by Ms. Ganga Bisht, against an accused in the criminal case. The Enquiry Officer found the applicant and the another guilty of the

charge and on the basis of the findings of the Enquiry Officer, the disciplinary authority awarded the punishment of reduction of pay for the period of five years with cumulative effect by the impugned order dated 14-9-98, the same has been confirmed in appeal by the appellate authority in its order dated 24-12-98. This order is under challenge in this OA. (6)

2. Learned counsel for the applicant Sh. Ajesh Luthra strongly urges that it was not the duty of the applicant who was only constable to register a case on the basis of a complaint and in fact in this case, the complaint was made to the S.H.O. on whose direction, the case was registered under Section 91 & 93 of the Delhi Police Act. It was also contended that the allegations made in the complaint are only covered by Section 91 & 92 of the Delhi Police Act and they are paramateria with section 509 of the IPC. It is further contended that the applicant has neither demanded nor accepted the money. It was only the Head Constable who was responsible for it. Moreover, as the applicant had no role to play in registration of the case, he cannot be found fault for any misdemeanour that has been caused by the other officers. The Enquiry Officer has not conducted the enquiry in conformity with the rules and he has not considered the evidence of the defence witnesses. Hence the enquiry was vitiated.

3. Learned counsel for the respondents Smt. Sumedha Sharma contends that both are responsible for demanding and accepting the money to minimise the

✓

gravity of defence and for registration of the same under Section 91/93 of the Delhi Police Act instead of under section 509 of the IPC and there is voluminous evidence on record in support of the charge against the applicant. 7

4. We have given careful consideration to the submissions made by the learned counsel on either sides. The main allegation against the applicant was bribery, accepting of Rs. 10,000/- (Rupees ten thousand) and Rs. 2500/- (Rupees two thousand and five hundred) to be paid on next day for minimising the case against them. The complaint was made by one Smt. Ganga Bisht alleging that one Sanjeev Rao behaved with her indecently. The complaint was made by her to the S.H.O. which was recorded by the applicant on his direction under Section 91 & 93 of the Delhi Police Act. On the basis of the complaint made by the accused of the case before the Magistrate and on the basis of observation made by the learned magistrate, the case should have been registered under Section 509 IPC, the charge has been issued to the applicant & anr. and the enquiry was held as stated (supra).

5. The Enquiry Officer has examined 7 witnesses on the side of the prosecution and 4 on the side of the defence. He has considered the entire evidence on record and on the basis of the statements made by Prosecution Witnesses 2, 5, 6 & 7, it was found that the charge of accepting Rs. 10,000/- (Rupees ten thousand) from the father of the accused Mr. Prahalad Rao was established. The contention that the evidence

2

of D.W.S. was not considered by Enquiry Officer, but is incorrect. A perusal of the Enquiry Officer's Report shows that the defence evidence has been considered. He also found that the defence witnesses had contradicted each other in their statements. Thus, he has totally disbelieved the evidence of the defence.

6. The contention that it was not his duty to register a case but that of the SHO under Section 154 of CRPC, the applicant being a constable cannot also be accepted. Section 154 of the CRPC reads as under :-

154. Information in cognizable cases

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the matter provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

Q

7. It is, therefore, clear that it is the duty of the S.H.O. to record any statement made by complainant and give a copy to the complainant. It is also seen that under his direction the Constable may record the statement and the instance thereof should be entered in the book. Hence, even if it is recorded by the applicant, it should have been only under his direction. Then F.I.R. is issued on the basis of the information. It is not in dispute that the case was registered on the basis of the complaint given by Ms. Ganga Bisht under Section 91/93 of the Delhi Police Act. Thus it cannot be said that the blame for registration of the case under the above provisions of the Delhi Police Act cannot be thrown upon the shoulders of the applicant who was in the least rank in the dept. The responsibility is that of the S.H.O., but no proceedings have been initiated against him. Hence, the finding of the Enquiry Officer as to the registration of the case by the applicant is in-valid.

8. However, this part of the charge being only a motive for taking money by the applicant & anr. Even if the motive is not established, as demanding and accepting the money, ~~being~~ the major charge against the applicant, has been established and as no explanation is coming forward from the applicant for taking the money, the charge of bribery was rightly held proved. The impugned order cannot be said to be vitiated on any ground.

9. In view of the above, we find no warrant to interfere with the impugned order. The OA,

✓

therefore, fails and is accordingly dismissed. No
costs.

(Govindan S. Tampi)
Member (Admin)

/vikas/

(V. Rajagopala Reddy)
Vice Chairman (J)

10