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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.677/99

New Delhi this the 1st day of February, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNVT)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Rajiv Rattan,
S/o Sh. B.S. Mahna,
R/o 36-C, Evershine Apartments,
'D' Block, Vikaspuri,
Delhi-110058.

...Applicant

(By Advocate Shri M.K. Gupta)

-Versus-

1. Lt. Governor,
Govt. of NCT of Delhi,
Raj Niwas,
Delhi.
 2. Commissioner of Police,
Delhi Police Headquarters,
I.P. Estate,
New Delhi-110 002.
 3. Sr. Addl. Commissioner of Police,
now known as Joint Commissioner of Police,
(Planning & Implementation)
Police Headquarters,
I.P. Estate,
New Delhi-110 002.
 4. Sh. S.Prakash, IPS,
Enquiry Officer,
(to be served through
Respondent No.2).
- ...Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, an ex-Inspector in the Delhi Police has challenged the order dated 30.9.97 passed by the Commissioner of Police, exercising powers under Rule 25 (d) of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter called as the Rules), enhancing the punishment from reduction in rank from Inspector to Sub Inspector to that of dismissal from service with immediate effect and also treated the period of suspension as not spent on duty

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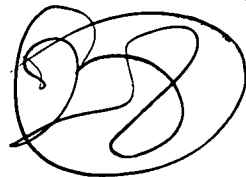
as well as absence period as dies non. The aforesaid punishment was carried in a revision and the same was rejected vide order dated 22.12.98 communicated on 31.3.99 to the applicant, as disclosed by the respondents in their reply.

2. The brief facts leading to filing of the present OA are that the applicant was working as an Inspector in the Delhi Police and was proceeded against in a departmental enquiry on the allegation of unauthorised absence from duty as well as for having extra-marital relations with Smt. Sona Devi. In support of the allegation evidence was recorded by the enquiry officer and thereafter a charge was framed against the applicant with an additional allegation of threatening Sh. Ravinder Singh, husband of WHC Smt. Sona Devi. The enquiry officer substantiated the charge against the applicant. On the basis of the findings of the enquiry officer the disciplinary authority imposed a major punishment upon the applicant of reduction to the lower rank from his substantive rank of Inspector to that of Sub Inspector (Executive) for a period of five years and also treated the period of suspension as not spent on duty and absence period as leave without pay. The applicant filed an appeal against the order of punishment and the appellate authority vide show cause notice dated 23.5.97, exercising the powers under Rule 25 (d) of the Rules ibid proposed to enhance the punishment to dismissal from service. On reply by the applicant the show cause notice was confirmed and the applicant was dismissed from service on 30.9.97.



3. The learned counsel for the applicant Shri M.K. Gupta assails the order of enhanced punishment on the ground that while coming to disagreement regarding the quantum of punishment the appellate authority has taken into consideration the charge of threatening the complainant Shri Ravinder Singh of his life in case he did not keep silence as well as over his extra-marital relations with WHC Smt. Sona Devi. According to the applicant the summary of allegation served upon him does not, inter alia, include the aforesaid charge of threatening the complainant. Further, according to him no evidence has been adduced during the departmental enquiry to support the said charge. The applicant has drawn our attention to the testimony of PW-2 Ravinder Singh and contended that there is absolutely no evidence with regard to the alleged threat to Sh. Ravinder Singh. According to him, when he put a specific question to the witnesses regarding any thing more to be added to his testimony, he replied by stating that he has narrated the whole story. The learned counsel for the applicant has also alleged that the remaining evidence recorded during the course of DE is not supporting the charge of threatening Sh. Ravinder Singh. Our attention has also been drawn to Rule 16 (iv) of the Rules ibid, which stipulates that the evidence is to be recorded in support of summary of allegation to frame a charge against the Delhi Police official. According to the applicant's counsel if the summary of allegation does not contain the allegation against him and if no evidence is recorded on it or the same has not come in the departmental enquiry, then framing of a charge against him would be in violation of the Rules ibid. The applicant's counsel further contended that despite having no material to

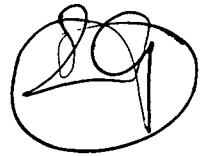
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support the charge the same was proved by the enquiry officer and the appellate authority while disagreeing on the quantum of punishment placed reliance on the charge of threatening Sh. Ravinder Singh to come to the conclusion that the punishment is not commensurate with the misconduct.

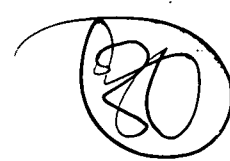
4. The learned counsel for the respondents Sh. Rajinder Pandita has taken exception to this contention of the applicant and contended that the Tribunal is precluded from re-appraising the evidence and assuming the role of appellate authority to come to a different finding from that what has been arrived at by the departmental authorities by substituting its own version. According to the learned counsel the case is not of 'no evidence' and the punishment of the applicant has been rightly enhanced, keeping in view the gravity of misconduct. As regards the contention of the applicant regarding reliance upon the charge the respondent's counsel has failed to give a reasonable explanation.

5. We have considered the arguments advanced by the learned counsel of the applicant and the respondents. We are not considering the various contentions raised by the learned counsel for the applicant and the respondents, as we proceed to dispose of the present OA on a short question of law, as to whether the punishment can be sustained upon a police official on an allegation which has not been put to him and against which he has been deprived of a reasonable opportunity to defend himself as well as whether the charge can be the basis of punishment if the same remains unproved on 'no evidence'? For this, we have



perused the summary of allegation and found that the allegation against the applicant regarding threatening the complainant Sh. Ravinder Singh has not been incorporated as part of summary of allegation. We have also seen the evidence recorded during the DE not to re-apprise the same but to see whether there is some evidence with regard to the aforesaid charge. We find that the complainant Sh. Ravinder Singh was examined as PW-3 and has not stated any thing regarding the alleged threat given by the applicant to him and no other witness has deposed any thing regarding the threat. In our view, in the absence of any evidence recorded in support of the aforesaid charge, which was not included in the summary of allegation, the inclusion of this charge in the charge framed against the applicant would be in contravention of Rule 16 (iv) of the Rules ibid. Apart from it, the applicant has been deprived of a reasonable opportunity to defend this charge in the absence of being incorporated as part of summary of allegation.

6. Admittedly, there is a lapse on the part of the enquiry officer by not incorporating the fact of alleged threat given by the applicant to the complainant and further incorporating it in the charge framed against the applicant without any evidence in support. The appellate authority has repaired the damage caused by the enquiry officer by placing reliance on this charge of alleged threat to complainant and enhanced the punishment. In this view of ours we are fortified by the ratio laid down by the Apex Court in Trilok Chand Mangat Ram & Others v. Kamla Prasad Shukla, 1995 (Supp.) 1 SCC 21.



7. We also feel that in the absence of any evidence recorded on this part of charge the finding of the enquiry officer is absolutely perverse with reference to this charge.

8. We find from the order passed by the appellate authority, enhancing the punishment that this part of charge has been relied upon to come to his conclusion that the punishment proposed is justified and is commensurate with the misconduct. It is relevant to reproduce the observations made by the appellate authority in its order dated 3.9.97 as under:

"The delinquent was having extra marital relations with W/Head Const. Sona Devi No.155/SW. Both had gone together for places like Nanital and Vaishno Devi. Hence, the plea of entanglement taken by the delinquent is not tenable and has no credibility in the instant case. The photographs exhibited Ex.PW-1/C1 to Ex.PW-1/C6 unambiguously confirm their extra marital relations. Moreover, the delinquent threatened the complainant (Shri Ravinder Sing) of his life if he did not keep silent over his extra marital relations with W/HC Sona Devi."

9. In our view the appellate authority while enhancing the punishment took into reckoning the charge of threatening by the applicant to the complainant of his life without any proof of the same and without any evidence in support of the same. The aforesaid charge was not even incorporated in the summary of allegation and against which the applicant was also denied reasonable opportunity to defend himself. In our considered view the appellate authority has relied upon an extraneous matter and acted mechanically while enhancing the punishment without going

through the evidence on record. The order of enhancing punishment, in these circumstances, is not legally sustainable and deserves to be set aside.

10. In the result, the OA is partly allowed. The order, enhancing the punishment to dismissal is quashed and set aside. We direct the respondents to re-instate the applicant in service forthwith. However, we remand back the case to the appellate authority to pass a fresh order on the appeal of the applicant, without taking into consideration the charge of threatening Sh. Ravinder Singh, the complainant, of his life and to further pass a detailed and speaking order after giving a reasonable opportunity of hearing to the applicant within a period of two months from the date of receipt of a copy of this order. The intervening period from the date of dismissal, i.e., 30.9.97 to actual re-instatement would be decided by the respondents after the orders are passed by the appellate authority and also in accordance with the relevant rules and instructions. No costs.

S. Raju
(Shanker Raju)
Member (J)

'San.'

V.K. Majotra
(V.K. Majotra)
Member (A)