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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1097/98

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T.A. No.

DATE OF DECISION: 25-4-2000

ASI Chander Pal Singh

....Petitioner

Sh.S.K.Gupta

....Advocate for the
Petitioner(s)

VERSUS

UOI & through Chief Secretary
Govt. of NCT of Delhi & Ors.

....Respondent

Ms. Neelam Singh

....Advocate for the
Respondents

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The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri V.K. Majotra, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan
Member (J))

(W)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 1097/98

New Delhi this the 25th day of April 2000

HON'BLE Smt. LAKSHMI SWAMINATHAN, MEMBER (J)

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

ASI Chander Pal Singh
No. 282/d.
S/o late Shri Umrao Singh
R/o E-A/186/2 Police Quarter
Tagore Garden, Delhi.

...Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Union of India,
through Chief Secretary,
5, Sham Nath Marg, Civil Lines,
New Delhi.

2. Commissioner of Police,
P.H.Q. I.T.O.
I.P. Estate, New Delhi.

3. Deputy Commissioner of Police,
III Bn. DAP, New Police Lines,
Kingsway Camp, New Delhi.

4. Sr. Additional Commissioner of Police,
(AP&T), P.H.Q., I.T.O.,
I.P. Estate, New Delhi.

...Respondents

(By Advocate: Mrs. Neelam Singh)

O R D E R (Oral)

SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

The applicant has challenged the validity of the penalty order dated 6.11.96 passed by the respondents, whereby they had imposed on him a penalty of forfeiture of three years approved service permanently for a period of six years entailing proportionate reduction in his pay. He has also challenged the appellate authority's order dated 30.4.97 rejecting his appeal against the disciplinary authority's order.

2. The brief relevant facts of the case are that the applicant was issued a charge-sheet for certain alleged misconduct during his service with the

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respondents. The allegations against the applicant were that while he was posted as Incharge Recruitment Cell in III Bn. DAP from 3.12.1991 to 3.8.1994 and 16.9.1994 to 1.3.1995, he got issued appointment letters to four candidates for the posts of Constables (Executive) in Delhi Police under the Scheduled Tribe quota/category without getting verified their caste certificates from the concerned issuing authority, despite the letter issued by the Police Hqrs. dated 19.4.94. As the applicant did not plead guilty to the allegations made by the respondents, an enquiry had been conducted against him by the respondents. The Enquiry Officer in his findings, has mentioned that he had scrutinised the evidence that was placed before him, including the relevant documents and the statements of the witnesses which were produced before him. He came to the conclusion that the charge framed against the applicant was proved. A copy of enquiry report was also provided to the applicant to enable him to submit his reply. The Disciplinary Authority in the impugned order has referred to the evidence which had been produced by the Enquiry Office and had agreed with his findings while imposing the punishment.

3. The applicant has taken a number of grounds in the Original Application assailing the penalty orders passed by the respondents. Shri S.K. Gupta learned counsel has in particular, during the hearing, submitted that the disciplinary proceedings are vitiated because of three main grounds. The first ground is that the applicant had given a list of defence witnesses, including the name of one Shri Subhash Verma SI, for being summoned officially as a

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defence witness. He has contended that as this witness was working in Delhi Police as Sub-Inspector, it was the duty of the Enquiry Officer to call him by issuing summons officially to him and calling as a defence witness, which has not been done. This he has stated is, therefore, in contravention of the principles of natural justice. The second main ground taken by the learned counsel is that the Enquiry Officer had put a number of questions to the prosecution witnesses (PWs), for example, PW-2-HC Dinesh Kumar. His contention is that the nature of questions put by the Enquiry Officer to this witness shows that it went beyond merely clarification but showed that the Enquiry Officer had clearly acted as a prosecutor as well as a judge which he cannot do. He has relied on an order of this Tribunal in Constable Sudhir Kumar Vs. U.O.I. & Ors (OA No. 1654/96) dated 25.2.2000. The third main ground taken by the learned counsel for the applicant is that the present case is a case of no evidence as PW-2 i.e. HC Dinesh Kumar, never deposed anything which will go against the applicant. He has submitted that there is no other evidence against the applicant to prove the allegations and charge, and, therefore, there is also no basis on which the respondents could have passed the aforesaid impugned penalty orders.

4. The respondents in their reply have controverted the above averments made by the applicant. According to them they had conducted the department enquiry proceedings in accordance with the relevant rules. They have submitted that the Enquiry Officer examined the prosecution witnesses in the presence of the applicant and ample opportunities have been provided to

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him to cross examine them, which he had also availed of. Mrs Neelam Singh, learned counsel for the respondents has also produced the relevant Departmental Enquiry File. From this file, she has referred to the application made by the applicant dated 15.3.96 submitted by him to the Enquiry Officer in which he has stated that "I want to produce SI Shri Subhash Verma, No. D/156 as defence witness in my defence". Learned counsel has submitted that this shows, therefore, that the applicant himself was in a position to produce the witness as a defence witness. For this purpose, according to her, a number of opportunities were given and the respondents finally informed the applicant that the final date for him to produce SI Subhash Verma as defence witness would be on 13.5.96. This was in response to a request made by the applicant to the Enquiry Officer that because of certain personal difficulties of the witness, a date may be given after 10.5.96. Mrs. Neelam Singh, learned counsel has submitted that in the facts and circumstances, as several opportunities have been given to the applicant to produce the witness and nowhere the applicant has asked that the Enquiry Officer should summon the witness, there is no violation of the principles of natural justice. On the second ground raised by the applicant, learned counsel has submitted that the questions that have been put by the Enquiry Officer to PW-2 were only in the nature of clarifications. She has also drawn our attention to the earlier deposition of PW-2 in which he has stated that he has diarised the relevant letter received from Police Headquarters dated 19.4.94 on 21.4.94, and handed it over to the applicant who was the Incharge of the Recruitment Cell. She has,

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therefore, submitted that there was no infirmity in this ground also. On the third ground raised by the learned counsel for the applicant, learned counsel for the respondents has submitted that in view of the aforesaid evidence and facts brought out in the departmental enquiry proceedings, this is not a case of no evidence and the Enquiry held against the applicant was in accordance with law and rules. In the circumstances, learned counsel has submitted that the OA may be dismissed.

5. We have carefully considered the pleadings, the Departmental Enquiry file and the submissions made by the learned counsel for the parties.

6. On first main ground taken by the learned counsel for applicant that it was the duty of the Enquiry Officer to summon SI Subhash Verma who was working with the Delhi Police, as mentioned above, from the application submitted by the applicant dated 15.3.96, it is seen that he had merely informed the Enquiry Officer that he wants to produce this witness in the D.E. proceedings. We had put a specific query to the learned counsel of the applicant whether the applicant had at any stage requested the Enquiry Officer to have a summons issued to this witness officially so that he could appear in the disciplinary proceedings but no such confirmation or document was given. From the D.E. records that have been shown to us during the hearing by the respondents, it is also noted that the applicant had merely informed the Enquiry Officer that he wishes to produce SI Subhash Verma as his witness but has not sought the

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intervention of the Enquiry Officer. They had also accommodated his request to have him produced as DW after 10th May i.e. on 13.5.96. Therefore, this ground appears to be an afterthought and we are unable to agree with the learned counsel for the applicant that in the circumstances of the case it was the duty of the Enquiry officer to have the summons issued officially to this witness so can appear as a defence witness. We find no force in this ground and it fails and is dismissed.

7. On the second ground taken by the learned counsel for the applicant that the Enquiry Officer had exceeded his powers and acted both as a Prosecutor and as a Judge, in the present case, we are also unable to agree with the contention. The Enquiry Officer had no doubt stated that he has put forth questions to PW-2 regarding the handing over and receipt of the dak by the dealing assistant and to the Incharge - applicant. However, it is pertinent to note that PW-2 in his deposition had already stated that the relevant letter from the Police Headquarters dated 19.4.94 has been received by him in Recruitment Cell on 21.4.94 which he has diarised on the same date and handed it over to the applicant who was Incharge of that Cell. He has also stated that the letter, in which the signature of the applicant is available, had been given as Ex. PW-1/C. in the Departmental enquiry proceedings. The same has also been referred to by Mrs. Neelam Singh Learned Counsel in her arguments and this exhibit has also been shown to us from the D.E. proceedings file. This prosecution witness had also stated that all the Dak which were received by him from Police Headquarters and

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other offices, were submitted to the Incharge Recruitment Cell after diarising them and the applicant was admittedly the Incharge of the Recruitment Cell, during his tenure as Despatcher. When the evidence of PW-2 is seen in the context of the questions put by the Enquiry Officer to him later on, it cannot be stated that the Enquiry Officer has acted both as Prosecutor and as a Judge, and this ground also fails. In the facts and circumstances of the case we, therefore, find merit in the submissions made by the learned counsel for the respondents that the questions put by the enquiry officer were in the nature of clarification from the PW as to how Dak was received, and if received in bulk how it was handed over to the concerned official and so on. In this view of the matter, taking into account the evidence of PW-2 as stated by him in the departmental enquiry proceedings, we are also unable to agree with the contentions of Shri Gupta, learned counsel for the applicant that this is a case of no evidence. In the facts and circumstances of the case, the ratio of the Tribunal's order in Const. Sudhir Kumar's case (OA 1654/96) relied upon by him, which is based on the finding that the Enquiry Officer had cross examined the prosecution and defence witness will not be applicable to the facts and circumstances of the present case. Therefore, both these grounds also fail as there is no infirmity in the conduct of the disciplinary proceedings as urged by the learned counsel for the applicant.

8. We have also considered the other grounds and submissions made by the learned counsel for the applicant. We find no good grounds to justify any

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interference in the penalty orders passed by the respondents which cannot be held to be either arbitrary, illegal or against the rules or the principles of natural justice which have been passed by the competent authorities.

9. In the result, we find no merit in the OA. It fails and is dismissed. No order as to costs.

V.K.Majotra
(V.K. MAJOTRA)
MEMBER (A)

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

cc.