

Central Administrative Tribunal, Principal Bench

OA No. 1797/95

New Delhi this the 28th day of March, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)  
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

ASI Mohd. Hashim Khan No.632/D,  
S/o late Shri Jan Mohd.  
R/o Barrack No.3, PCR at P.S. Defence Colony,  
New Delhi.

...Applicant

(By Advocate Shri Shankar Raju, though none appeared)

-Versus-

1. Union of India/Lt. Governor of NCT Delhi,  
through Commissioner of Police, Police  
Headquarters, MSD Building,  
I.P. Estate, New Delhi.

2. Addl. Commissioner of Police (CID),  
Police Headquarters, MSD Building,  
I.P. Estate,  
New Delhi.

... Respondents

(By departmental representative ASI Suresh Chand)

By Reddy. J. -

ORDER (ORAL)

None appears for the applicant. His counsel is also not present. Departmental representative ASI Suresh Chand is present on behalf of the respondents. Their counsel is also not present. Since this is an old matter of 1995, we proceed to dispose of the matter on merits on the basis of the material on record.

2. The applicant, while working as Assistant Sub Inspector (ASI), was served with a summary of allegations, in which it was alleged that while he was posted in the Operational Cell, SB had accepted Rs. 50,000/- from Smt. Turpkai, w/o Mohd. Shaboor to get her husband released on bail in case FIR No. 353 dated 23.10.89 under Sections 21/29/61/85 NDPS Act for being in possession of 2 kg. heroine. As the allegations were denied by the applicant, the enquiry was entrusted to an enquiry officer, who conducted the enquiry and submitted his

*ORA*

13

674

findings, stating that the charge against the applicant ~~should be~~ <sup>is</sup> proved. The disciplinary authority, served a copy of the enquiry report ~~on~~ the applicant and after receiving a reply from the applicant and after hearing the applicant in person, agreed with the findings of the enquiry officer and found that the applicant was guilty of the charge. Thereupon, he ~~imposed~~ the punishment of forfeiture of four years of approved service for a period of four years, reducing his <sup>by</sup> pay four stages and that he would not earn increments during the period of reduction and on the expiry of this period the reduction will have the effect of postponing his future increments by order dated 31.3.93. The appeal filed by the applicant was, however, rejected by order dated 6.12.93. The present OA is filed, challenging the above two orders.

3. It is pleaded by the applicant that this is a case of 'no evidence' and the disciplinary authority placed reliance only upon the previous statements made by the witnesses in the preliminary enquiry, while holding ~~that~~ the applicant is guilty of the charge. It is urged by the applicant that the statements recorded during PE cannot be relied upon in preference to the evidence adduced in the disciplinary enquiry.

4. We have gone through the pleadings very carefully. The essence of the allegation against the applicant is the acceptance of Rs.50,000/- illegally from PU-3 for releasing of her husband on bail. During the disciplinary enquiry three witnesses are examined. PU-1 is the Inspector Babu Lal. He stated that he conducted the preliminary enquiry on the basis of the complaint made against the applicant. During his deposition the written statement submitted by the applicant to the charges was exhibited as PU-1/A. The previous statement of PU-3 which was ~~alleged~~ to have been recorded by him was also brought on record as

CAB

15

PW-1/B, so also the report submitted by him on 23.7.90 was also brought on record as PW-1/C. PW-2 was ACP R.P. Kochhar. He stated that he made endorsement on PW-1/C and that it came to his notice that the applicant has obtained illegal gratification of Rs. 50,000/- from PW-3. He submitted his report dated 23.7.90 Ex-PW-2/A, Ex-PW-2/B and Ex-PW-3/C. On the basis of the notes the enquiry against the applicant was ~~initiated~~ <sup>initiated</sup>. The text of the note was also brought on record as Ex-PW-2/A, PW-2/B and PW-3/C. PW-3 herself was examined and she clearly stated in her statement that "She did not give any money to the defaulter. The defaulter is innocent." It is her evidence that a police man demanded Rs. 2 lakhs to get her husband released on bail. She did not give any money to the applicant. Again Rs. 50,000/- were demanded and finally she sold her ornaments and that in spite of paying the money her husband was not released. The said police officer did not meet her again. Hence, she kept quiet. She thereafter says that she did not give any money to the applicant. The enquiry officer has cross-examined this witness but she flatly refused that PW-1/B, which is alleged to be her previous statement did not contain her signature, ~~on that statement~~ <sup>on that statement</sup>. She also says that she did not find PW-1 at all and that he did not meet her. She also states that she did not tell Inspector Babu Lal that the applicant has returned Rs. 11,000/-. She says that the applicant is a gentleman.

5. This is the entire evidence on record. On the basis of this evidence the charge has been framed and thereafter the defence witnesses were examined. The enquiry officer, however, mainly relying on the previous statements alleged to have been made by PW-3 and other witnesses came to the conclusion that the charge was proved. Under Rule 15 (3) of the Delhi Police (Punishment & Appeal) Rules, 1980 it is permissible to bring the statements recorded during

CAV

16

PE on record of the departmental proceedings when the witnesses are no longer available. The enquiry officer can also rely upon the documents on the PE file after supplying copy of the same to the accused officer. Thus the statements can be brought on record during the disciplinary enquiry only when the witnesses are no longer available. But the deposition of a witness during the departmental enquiry cannot be thrown over <sup>board</sup> and her previous statement relied upon. Since it is the allegation that the PW-3 herself gave money to the applicant in order to enable the release of her husband on bail, when she resiles from <sup>her previous</sup> ~~the~~ statement and there is no <sup>other</sup> ~~other~~ evidence on record as to the payment of illegal gratification to the applicant except the alleged previous statements made during PE, it appears that the case has to fall on the ground of 'no evidence'. The previous statement cannot be substituted for the legal evidence recorded during the enquiry.

6. In the aforesaid circumstances, we are of the view that the impugned orders are vitiated and hence they are set aside. The O.A. is, therefore, allowed. No costs.

*Shanta Shastri*  
 (Smt. Shanta Shastri)  
 Member (Admin)

*V. Rajagopala Reddy*  
 (V. Rajagopala Reddy)  
 Vice-Chairman (J)

'S en.'