

(31)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.2415/95

New Delhi: dated this the 23rd day of APRIL, 2001

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN(A).

HON'BLE DR.A.VEDAVALI, MEMBER(J)

Inspector Gurmeet Singh,
G-5, Chanakyapuri Police Station,

New Delhi.

.....Applicant.

(By Advocate: Shri D.N.Goburdhan)

Versus

1. Govt. of NCT of Delhi
through
the Chief Secretary,
Sham Nath Marg,
New Delhi.
2. Commissioner of Police,
Police Headquarters,
I.P.Estate,
New Delhi.
3. Addl. Commissioner of Police,
APNT,
Police Headquarters,
I.P.Estate,
New Delhi.
4. Dy. Commissioner of Police,
3rd Bn. DAP,
Delhi.
5. Dy. Commissioner of Police,
D Cell,
Defence Colony P.S.,
New Delhi.
6. Mr. Sita Ram Vohra,
5th Bn.,
Delhi Armed Police,
New Delhi.

....Respondents.

(By Advocate: Ms. Jasmine Ahmed).

ORDER

S.R.Adige.VC(A):

Applicant impugns respondents' order dated 27.10.95 (Annexure-A) initiating departmental proceedings against him.

2. This OA was initially dismissed by the Tribunal
- ~

32

by its order dated 29.9.99. Subsequently upon appeal in CWP No. 2156/2000 in Delhi High Court, the case has been remanded back to the Tribunal by order dated 5.5.2000 by passing fresh order after going through the relevant records, which had been called for by order dated 29.8.1996.

3. The OA was again dismissed for default on 28.8.2000 because of non-appearance of parties that day, but was subsequently restored on 29.9.2000 for hearing.

4. We have heard the parties and perused the relevant records including the contents of File No. F-24(10)92/Vig.

5. The relevant notings in that file reveal that following 3 cases under NDPS Act were registered at P.S. Chandni Mahal in one day on 30.11.91.

i) Case FIR No. 238/91 under sec. 21/61/85 NDPS Act against accused Mohd. Irfan and 400 gram. smack was shown to have been recovered from him.

ii) Case FIR No. 239/91 u/s 21/61/85 NDPS Act against accused Chanderkesh Singh and 400 gr. smack was shown to have been recovered from him.

iii) Case FIR No. 240/91 under sec. 21/61/85 NDPS Act against accused Khalid Hussain S/o Mushtaq Ahmed and 200 gram smack was shown to have been recovered from him.

6. Several complaints were received that innocent persons had been lifted by the police and large sums of money were demanded from them individually, and those who paid were let off, while those who did not pay were booked under the aforesaid 3 cases by concocting false evidence.

33

7. A written complaint was received from Shri Mushtaq Ahmed, father of accused Khalid Hussain in case FIR No.240/91 that his son had been falsely implicated in the aforesaid case. The complaint was endorsed to applicant for inquiry and report who at the relevant time was Inspector of Police in Vigilance Branch .

8. Applicant in his detailed enquiry report dated 1.5.92 recorded that the presence of the witnesses at the time of recovery was doubtful. Moreover the possibility of false involvement of Khalid Hussain in the smack case could not be ruled out as he had no criminal record; there were several witnesses who had certified to his having been lifted the previous night from his place of work, including log book entries of the vehicle used by the police party, the statement of the vehicle driver etc. He further stated that the SHO Chandni Mahal (Respondent No.6 in the OA) and other officials of P.S.Chandni Mahal whom he named were liable for false involvement and illegal detention of Khalid Hussain in Case FIR No.240/91 under NDPS Act on 30.11.91. He also stated that they had also accepted large sums of money for the release of two other persons Akil and Asif who were also taken to the P.S. on the same evening of 29.11.96.

9. During hearing of the bail application of accused Khalid Hussain the Sessions Court asked for the vigilance enquiry report which was not produced for nearly 4 months as the same was still under process with the senior officers. After perusal by the Commissioner of Police, the enquiry report was produced before the Sessions Court but the bail petition was rejected. Later Shri Khalid Hussain moved the Delhi High

34

Court when the vigilance enquiry report was considered and he was bailed out.

10. The complainant (father of accused Khalid Hussain) had also represented before the L.G. Delhi regarding false involvement of his son in the case under NDPS Act. The vigilance enquiry report was called for by L.G. Delhi which was submitted to him by D.CP (Vigilance). The LG Delhi examined the case, including the report of the Screening Committee, but accepted the vigilance enquiry report submitted by applicant and ordered withdrawal of the case, upon which the case was withdrawn from the court on 6.9.94.

11. Indeed on the basis of applicant's enquiry report dated 1.5.92 the DCP Vigilance in his note dated 19.5.92 had recommended for disciplinary action against SHO Chandni Mahal and others, but in the course of further examination of the matter, this proposal did not find favour with the Addl. C.P., Northern Region, who in his note dated 27.5.92 after relying upon the report of the DCP (Central) and DCP North East concluded that no such incident of falsely implicating Shri Khalid Hussain had taken place. Indeed it is in this note that the Addl. CP Northern Railway made certain observations about applicant deciding to appear in court and voluntary information that vigilance was looking into the authenticity of recovery of smack from Shri Khalid Hussain that eventually led to the issue of impugned order dated 27.10.95 initiating departmental proceedings against applicant.

12. Meanwhile no action was taken against the personnel indicted by the Vigilance Branch, and it was

2

35

decided to await judgment in the other two cases, which had not been inquired into by Vigilance Branch. Those two cases ended in acquittal in January, 1996 and October, 1996. Although the Joint Commissioner of Police Vigilance recommended severe departmental action against the officers and staff of P.S. Chandni Mahal for registering false cases, and the proposal to deal with them departmentally for a major penalty, was initially approved by the Commissioner of Police on 9.3.99, later by his order dated 23.4.99 it was decided not to proceed with those officers departmentally on the ground that the acquittals were based on technical considerations, and there was nothing to infer from the judgments that false cases were planted against innocent persons.

13. Meanwhile, as mentioned earlier, impugned order dated 27.10.95 had issued initiating departmental proceedings against applicant on the allegation that while posted in Vigilance Branch during 1992 he had conducted a Vigilance enquiry on the complaint of one Ashfaq Ahmed Qazmi in connection with Case FIR Nos. 235, 239 and 240/92 under NDPS Act, P.S. Chandni Mahal in which the son of the complainant Khalid Hussain was arrested by the local police of P.S. Chandni Mahal. Applicant had appeared in Court and reported at his own that Vigilance Branch was conducting an enquiry in these cases while the enquiry report was still under the perusal of the senior officers. The order goes on to allege that he also produced a copy of the enquiry report in court, and made it available to the defence counsel, before it was accepted by the PHQ/Sr. Officers, and despite the fact that DCP Vigilance had informed the

2

36

Court that the enquiry had not been completed and till it was accepted by Senior Officers, it could not be submitted to the court. The order further goes on to allege that as a result of applicant making available a copy of his report to the defence, Shri Khalid Hussain was able to secure bail, and also get the case against him withdrawn on the order of the LG Delhi, which considerably damaged the prosecution case in regard to the other two FIRs as also three cases were registered one and the same day.

14. By interim order dated 31.5.96, respondents were restrained from proceeding with the OE till a final decision was taken on the OA. That interim order has continued from time to time.

15. Meanwhile applicant has superannuated on 31.12.95.

16. We have considered the matter carefully.

17. As discussed above the allegations against applicant are that he appeared in Court in Case FIR No. 21/91 u/s 21/61/85 NDPS Act against accused Khalid Hussain on his own, made available to the Court as also to the defence a copy of vigilance enquiry report in respect of the Police Officer of PS. Chandni Mahal, although the report had not been finally accepted by the department and on the basis of that vigilance enquiry report not only was Khalid Hussain able to secure bail, but the case against him itself was withdrawn by order of LG Delhi which damaged the prosecution case in the other two FIRs.

18. In this connection, we have been shown copies of Shri Khalid Hussain's petitions dated 20.3.92 and 19.6.92 moved in the Court of ADJ Delhi in connection with the criminal case against summoning of the vigilance report.

Photocopies of those petitions have been taken on record which bear the clear written orders of the ADJ Delhi summoning applicant along with the vigilance report. Indeed such written orders were given on both the applications. Hence the allegation that applicant appeared in Court on his own and submitted a copy of the enquiry report of the same to the defence side is clearly not borne out by facts. It is manifest that he submitted the vigilance inquiry report conducted by him upon the express directions of the Court. Indeed during hearing applicant's counsel Shri Goburdhan averred that before doing so, applicant had obtained the written orders of his superior and a copy of his report was also retained by the Public Prosecutor, whom applicant had briefed before he appeared in Court.

19. If on the basis of the aforesaid enquiry report which applicant produced upon the express direction of the Court, Shri Khalid Hussain was able to secure bail, and if upon its basis the LG Delhi under whom respondent's work being satisfied that no case against Khalid Hussain was made out, ordered withdrawal of the case against him, applicant certainly cannot be said even prima facie to be guilty of any misconduct. Furthermore, as the other two cases ended in acquittal of those accused persons by a competent court of Law, the fact that the prosecution was not able to succeed, cannot be made a ground to allege misconduct on applicant part. Indeed, if despite the vigilance report respondent's felt they had a good case, it was open to them to have appealed against those two acquittals.

20. In the result, in the particular facts and circumstances of this case, which is not to be treated as precedent, the OA succeeds and is allowed.

38

to the extent that the impugned order dated 27.10.95 is
quashed and set aside. No costs.

A. Kedarappa
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

/ug/