

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.269/95

Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri Kuldip Singh, Member(J)

New Delhi, this the 29th day of October, 1999

1. Head Const. Mohinder Singh No.4347/DAP
son of Late Shri Jai Lal Singh
aged 48 years, presently posted in Vth BN.DAP
r/o Village & P.O. Hamidpur, Delhi - 110 036.
2. Head Const. Kapoor Singh No.8171/DAP
son of Late Shri Mange Ram, aged 41 years
presently posted in VIIth Bn. DAP
r/o R-173, Gopal Nagar, Azadpur, Delhi - 110 033.
3. Constable SHEO Pal Singh No.6229/DAP
s/o Shri Bhagwant Singh, aged 33 years
presently posted in Ist Bn. DAP
R/o Village & P.O. Dayal Pur Distt. Faridabad
Haryana.
4. Const. Sri Krishan No.4769/DAP
s/o Shri ----- aged 33 years
presently posted in Vth Bn. DAP
r/o Village & P.O. Sarai Aurangabad P.S.
Bahadurgarh Distt. Rohtak (Haryana) ... Applicants

(By Shri Shankar Raju, Advocate)

Vs.

1. Ltd. Governor of N.C.T. of Delhi
(through Commissioner of Police)
Police Headquarters, M.S.O. Building
I.P.Estate, New Delhi.
2. The Additional Commissioner of Police
(Northern Range)
Police Headquarters, M.S.O. Building
I.P.Estate
New Delhi. ... Respondents

(By Singhal, proxy of Shri Anoop Bagai, Advocate)

O R D E R (Oral)

Hon'ble Shri R.K.Ahooja, Member(A)

The facts leading to the present OA may be briefly described: A departmental enquiry was conducted against ASI Mohinder Singh and Constable Ram Kishore on the allegation that on 21/22.6.1989 while posted at P.S. Narela they had gone to investigate a quarrel at Village Holambi Kalan and there had arrested one Head Constable Dharam Pal under Section

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107/151 Cr.P.C. by showing that he was present at the spot and threatening some persons with dire consequences. On enquiry it was found that the said Head Constable Dharm Pal had been performing the patrolling duty at Police Station Adarsh Nagar from 6. P.M. to 0020 A.M. vide Daily Diary No.41-B & 59-B, dated 21/22.6.1989, P.S. Adarsh Nagar respectively. An enquiry was ordered by the Deputy Commissioner of Police (DCP) on the allegation that ASI Mohinder Singh had arrested Head Constable Dharm Pal even though he was not present at the spot. ASI Mohinder Singh was however found not guilty in the subsequent departmental enquiry but the enquiry officer concluded that false evidence against ASI Mohinder Singh had been given in the departmental proceedings by the applicants herein. This led to common disciplinary proceedings against these applicants.

2. The enquiry officer held all the defaulters guilty of the charge that they had deposed falsely in the departmental enquiry against ASI Mohinder Singh, etc. After considering the representation of the applicants, the disciplinary authority by his order dated 26.9.1992 imposed the penalty of forfeiture of three years approved service and reduction of pay by three stages in respect of all the three applicants, for a period of one year with effect from the date of issue of the order. The appeals filed by the applicants were also dismissed by the Additional Commissioner of Police vide order dated 21.1.1994, Annexure-A2. It is against these two orders that the applicants have now come before the Tribunal.

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3. Shri Shankar Raju, learned counsel for the applicants has taken us through the enquiry report. The case of the department against the applicants in the departmental enquiry hinges mainly on the authenticity of DD No.59/B, Police Station Adarsh Nagar. The only witness examined, in the departmental enquiry, of Shyam Singh, ACP Special Cell, New Delhi has deposed as follows:

"During the course of the Departmental Enquiry he obtained opinion regarding signature of HC Dharmpal Singh No.121/NW after readjustment of carbon copy with original Roznamcha. The signature of the Hd. Const. are on different angles on the original Roznamcha and on the carbon copy."

4. The learned counsel for the applicants pointed out that the expert of the Central Forensic Science Laboratory (CFSL) who had given the report dated 1.8.1990, Annexure-A6 was not produced even though he was cited as a witness. As a result the applicants were handicapped in their defence inasmuch as they had no opportunity to cross-examine the witness regarding the validity and correctness of his findings. The learned counsel for the respondents submits that under Rule 16(iii) of the Delhi Police (Punishment and Appeal) Rules, 1980, the enquiry officer is empowered to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expenses if he considers such statement necessary provided that it is recorded and attested by a police officer superior in rank to the accused officer or by Magistrate and is either signed

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by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial.

5. The learned counsel for the applicant also submits that since the officer in question was a Senior Scientific Officer of the CFSL, it was not convenient to summon him as a witness.

6. We are not satisfied with the aforesaid explanation. The only document on which the finding is based is the finding of the CFSL regarding the authenticity of the DD entry. It was thus essential that the officer who had recorded the report of CFSL should have been produced as a prosecution witness.

The applicants herein, in the circumstances, had no opportunity to show that the findings of the CFSL were incorrect. We are also of the view that even if this report is accepted at face value, it does not automatically establish the charge against the applicants. The deposition of the applicants in the enquiry against the ASI Mohinder Singh, copy of which is at Annexure-A7 (page 32) shows that they had deposed only that they had seen HC Dharam Pal at the Police Station; they had not stated that they had seen Head Constable Dharm Pal signing the DD entry. We also find that, on the other hand, PW-10, Constable Surender Singh at Police Station Adarsh Nagar had deposed in his evidence that in the enquiry against Constable Mohinder Singh that he was the daily diary writer on the night of 21/22.6.1989 and the DD No. 59-B dated 21/22.6.1989 had been written by him regarding arrival of Dharam Pal from patrolling along with other staff. We find that Constable Shri Surinder Singh was not amongst those against whom the enquiry in question

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had been initiated. There is no explanation as to why Surender Singh who had professed to record the allegedly false DD entry was not proceeded against. The explanation given by the learned counsel for the respondents that the enquiry officer looking into the allegations against the ASI Dharm Pal had also recommended action against the Surender Singh but for some reason was not taken against him, does not help the case of the department.


7. We also find that HC Dharm Pal had filed a Writ before the Delhi High Court regarding the cancellation of the departmental proceedings under section 107/151 Cr.P.C. registered against him. The Writ Petition was allowed and the High Court had also observed as follows:

"According to Annexure R1, it appears that Sh. S.K.Jain, DCP has ordered an enquiry against respondent 1 after being satisfied that the petitioner had performed patrolling duty at PS Adarsh Nagar from 6.00 PM to 12.20 AM on the aforesaid date and respondent 4 had misused the official powers in arresting the petitioner"

8. The aforesaid discussion leads us to conclude that this is a case of "no evidence" and therefore, the finding of the enquiry officer as well as the disciplinary authority are perverse, more so because the enquiry officer has not given his reasons for not summoning the CFSL expert as required under Rule 16(iii) of Delhi Police (Punishment and Appeal) Rules, 1980.

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9. In the result the OA is allowed. The orders of disciplinary authority and appellate authority are quashed. The applicants will be entitled to all consequential benefits in respect of the restoration of pay, etc. This will be done within three months from the date of receipt of a copy of this order.. No costs.


(Kuldip Singh)
Member(J)


(R.K. Ahooja)
Member(A)