

Central Administrative Tribunal
Principal Bench

O.A. No. 598/95

Decided on 29.11.99

Shiv Nandan Tyagi

... Applicant

(By Advocate: Shri Shankar Raju)

Versus

L.G., Delhi & Others

... Respondents

(By Advocate: Shri Rajinder Pandita)
CORAM

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying
benches of the Tribunal or not? NO

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

Central Administrative Tribunal
Principal Bench

(7)

O.A. No. 598 of 1995

New Delhi, dated this the 29 th November, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

S.I. Shiv Nandan Tyagi No.901/D,
S/o Shri Chander Singh,
R/o A-1/143, East Gokul Puri,
Shahdara, Delhi-110094. Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. Lt. Governor of Delhi/Union of India,
through Commissioner of Police,
Police Headquarters, M.S.O. Building,
I.P. Estate, New Delhi.

2. Addl. Commissioner of Police,
C.I.D., Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.

.... Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER

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

Applicant impugns the suspension order dated 18.8.93 (Annexure A-4), the E.O's report dated 15.7.94 (Annexure A-3); the Disciplinary Authority's order dated 29.9.94 (Annexure A-1) and the appellate authority's order dated 1.2.95 (Annexure A-2).

2. Applicant was proceeded against departmentally by order dated 22.10.93 (Annexure A-5) allegation that 5.8.93 while posted in Operation Cell, East District as S.I. of Police he contacted Shri K.C.Gupta and Shri Deen Dayal who are business

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partners and demanded Rs.50,000/- from each of them separately on the pretext that they had provided accommodation to the gang members of a notorious Bombay Mafia Don one Dawood Ibrahim and threatened them with arrest under TADA. Earlier, in the last week of July, 1993 one Chander Kant Patil who was an associate of Dawood Ibrahim had been arrested by the crime Branch of Delhi Police under TADA and Shri K.C.Gupta had acted as a broker regarding the sale of a plot of land between the owner Shri Har Prasad and the purchaser Shri Chandra Kant Patil and had taken Rs.5,000/- as commission.

3. Applicant was suspended by order dated 18.8.93 (Annexure A-4). The E.O. in his report dated 15.7.94 held the charge as proved.

4. A copy of the E.O.'s findings was made available to applicant vide U.O. dated 21.7.94. He submitted his representation on 3.8.94. After giving applicant a personal hearing on 9.9.94, the Disciplinary Authority, by impugned order dated 29.9.94 imposed the punishment of withholding five future increments of applicants permanently for five years, with immediate effect. Applicant was released from suspension by the aforesaid order but his suspension period was treated as period not spent on duty.

5. Applicant's appeal was rejected by order dated 1.2.95.

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6. The first ground taken is that Rule 16(1) Delhi Police (P&A) Rules has been violated because the Disciplinary Authority without any authority or competence instead of appointing the Enquiry Officer, in fact further delegated it to the D.E. cell without any authority. Respondents have pointed out in their reply that the D.E. was rightly entrusted to D.E. Cell as per Memo dated 5.12.86 as it had a vigilance angle. Applicant has not been able to establish any prejudice that was caused to him consequent to the enquiry being entrusted to D.E. Cell. This ground is, therefore, rejected.

7. The next ground taken is that copies of certain relevant documents, including the verbal complain as reported to the D.C.P., the P.E. report and the statements recorded by the P.E. Officer were not supplied to applicant which prejudiced him in his defence. From a perusal of the impugned orders of the Disciplinary Authority as well as the appellate authority it is clear that this particular ground was not pressed before either of them, as there is no mention of this ground in either of their orders and it is, therefore, an after-thought. That apart from a perusal of the impugned orders of the Disciplinary Authority as from the note of A.C.P., D.E. Cell dated 7.2.94 (copy with Annexure A-7) we find that the D.C.P. had informed vide his letter dated 15.12.93 that a complaint was made to him verbally on

phone by a public man on which Inspector Bal Kishan was asked to inquire and report. Moreover we notice that the copy of Shri K.C. Gupta and Shri Deen Dayal's complaint as well as the copy of Inspector Bal Kishan's inquiry report were furnished to applicant along with the Memo of allegations. Under the circumstances, applicant has not satisfactorily explained which other relevant documents were not supplied to him as a result of which he was prejudiced on his defence during the D.E. This ground is, therefore, also rejected.

8. The next two grounds may be dealt with together. Firstly it is contended that the charge is vague and is lacking in material particulars in as much as in the summary of allegations, it is stated that applicant contacted complainant K.C. Gupta on 5.8.93, while in the charge the date is shown as 6.8.93. In this connection applicant has advanced the alibi that he was on duty elsewhere, and could not have contacted Shri Gupta on either of those date. Secondly it has been argued that the E.O's findings ~~which~~ donot discuss~~e~~ the defence contentions, & are based on suspicion, conjectures and surmises.

9. There are sufficient materials on record

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to establish that applicant did visit Shri K.C.Gupta's shop and did hold out threats to him to book him under TADA Act. No doubt Shri K.C.Gupta later turned hostile and denied any demand of money from him, but as pointed out by the appellate authority, had applicant not visited Shri K.C.Gupta's shop and threatened to book him under TADA Act, Shri Gupta would have had no reason to complain against him. It is true that there is some discrepancy as to the date on which applicant went to Shri Gupta's shop, but the charge that applicant did contact Shri Gupta has not been successfully rebutted by him. The E.O in his findings has discussed the defence contentions and those findings cannot be said to be based merely on suspicions, conjectures and surmises as alleged. Therefore, these two grounds also fail.

10. The next ground taken is that the Disciplinary Authority's order is perverse based on no evidence and displays lack of application of mind. A perusal of that order makes it amply clear that the Disciplinary Authority has discussed in detail each of the pleas taken by applicant and has come to definite conclusion regarding each of those pleas. Hence this ground also fails.

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11. Similar grounds have been taken in regard to the appellate authority's order also, but a perusal of the same also makes it clear that it is a reasoned order which discusses the pleas taken in the appeal.

12. Applicant's counsel has relied upon paragraphs 6 and 9 of the Hon'ble Supreme Court's judgment in Kuldeep Singh Vs. Commissioner of Police & Ors. JT 1998 (8) SC 603 to argue that the findings in this D.E. are based on no evidence and indeed are perverse, as they could not be reached by any ordinary prudent man, which, therefore, warrants judicial interference. We are unable to agree with this contention. Indeed, as mentioned above, we have no reasons to disagree with the appellate authority that had applicant not visited Shri K.C.Gupta's shop and extended threats to book him under TADA Act, Shri Gupta would not have made any complaint against him. It must be remembered that the degree of proof required in a domestic enquiry to bring home the charge of misconduct against a delinquent, is not the same as that required to establish guilt in a criminal proceeding. In a criminal proceeding the guilt has to be established beyond all reasonable doubt, but in a D.E. it is sufficient if the preponderance of probability points to the ^{misconduct} ~~guilt~~ of the delinquent. In the present case it is manifest that on the basis of the preponderance of probability, applicant is guilty as

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charged. Indeed in our view the ruling of the Hon'ble Supreme Court by a three Judge Bench in Union of India & Anr. Vs. B.C. Chaturvedi (1995) 6 SCC 749 is, in our view, squarely applicable to the facts and circumstances of the present case, wherein it has been held that when the findings of the Disciplinary Authority/appellate authority are based on some evidence, Courts/Tribunals cannot reappreciate the evidence and substitute its own findings.

13. The OA therefore fails and is dismissed.
No costs.

Kneaf
(KULDIP SINGH)

MEMBER(J)

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

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