

(10)

Central Administrative Tribunal, Principal Bench

Original Application No.1140 of 1996

New Delhi, this the 15th day of February, 2000

Hon'ble Mrs.Lakshmi Swaminathan, Member (J)

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

Shri Kishan (8085/DAP) son of late Shri Zile  
Singh, resident of House No.111, Village  
Poothkalan, Delhi.

- Applicant

(By Advocate - Shri Shyam Babu)

Versus

1. Addl.Commissioner of Police (Southern  
Range), Police Headquarters, I.P.Estate,  
New Delhi-110002.

2. Addl. Deputy Commissioner of Police,  
(West District), P.S.Rajouri Garden, New Delhi-Respondents

(By Advocate - Shri George Paracken)

O R D E R (Oral)

Mrs.Lakshmi Swaminathan, Member (J)-

The applicant who is working as Head Constable with Delhi Police is aggrieved by the order passed by the disciplinary authority dated 6.7.1995 whereby the punishment of reduction by two stages from Rs.1150/- to Rs.1100/- in the time scale for a period of two years had been imposed on him. It was also ordered that during this period he would also not earn increment of pay and the reduction would have the effect of postponing his future increments. He is also aggrieved by the appellate authority's order dated 21.12.1995 by which his appeal has been dismissed.

2. The aforesaid impugned orders have been passed by the competent authorities after holding a departmental enquiry against the applicant under Section 21 of the Delhi Police Act, 1978.

3. The brief facts of the case are that the applicant was issued a memorandum of charge on

18

29.12.1994. The relevant portion of the charge reads as follows :

"I, K.L.Meena, Inspector AATs West Distt., Charge you H C Shri Kishan No. 447-W that while posted at P.S. Nangloi, you were given some personal bond and surety bond papers for verification of the same, received from the Juvenile Court Delhi. You were to submit the verified report by 11.6.92, which related to case FIR No. 153/92 V/S 381 IPC PS Nangloi complainant Sh Surya Narain Chaudhary met you on 10.6.92, in respect of whom the said verification was to be done, for release of his son from children home, in the said case. During that meeting you however, demanded Rs.600/- the illegal gratification, for submission of a favourable report in the court. Since, the complainant Mr.Chaudhary, did not intend to pay the demanded bribe, he lodged a complaint in C.B.I. on 10.6.92 itself, against you.

Accordingly, a trap was organised on 11.6.92 and you were apprehended, while accepting the demanded bribe, red-handed.

The above said act on part of you, H.C. Shri Kishan No.447-W, amounts to grave misconduct, which renders you liable to Punishment under Delhi Police (Punishment and Appeal) Rules, 1980."

4. After holding the departmental enquiry the enquiry officer in his report dated 11.6.1995, after evaluating the statements of prosecution witnesses as well as defence witnesses produced by the applicant and the relevant documents and evidence placed before him, came to the conclusion that the charge in the case was proved. In the report, the enquiry officer has also made a specific mention that there were 'minor discrepancies' in the evidence given by the witnesses which he has attributed to many factors e.g. witnesses' educational background, mental condition, power of observation and retention. These facts are very relevant, as one of the main contention taken by Shri Shyam Babu, learned counsel, is that the enquiry held against the applicant disclosed a number of discrepancies in the evidence given by the various

18.

prosecution witnesses. In particular, he has referred to the statements given by the prosecution witnesses 4, 8 and 10. His contention is that while one of them (PW8) stated that bribe money of Rs.600/- was made of denomination of Rs.50 each, PW 10 on the other hand stated that there were six notes of Rs.100/- each. At the same time PW 4 states that he was unaware of the details of the denomination of the notes. The learned counsel for the applicant has, therefore, very vehemently submitted that in a trap case where the allegation is of demanding and taking bribe, such discrepancies cannot be tolerated as they are material and the only conclusion that can be arrived is that there was in fact no reliable proof which has been submitted by the prosecution witnesses to justify imposition of any punishment on the applicant. Similarly, he has submitted that the prosecution witnesses have also given statements which are some-what contradictory, namely, regarding the hand wash and recovery memo. In the circumstances Shri Shyam Babu, learned counsel has submitted that the Court should take note of these discrepancies and contradictions and come to a conclusion that no case has been made out against the applicant and quash the impugned punishment orders. He has relied on the judgment of the Hon'ble Supreme Court in the case of Khilli Ram Vs. State of Rajasthan, (AIR 1985 SC 79).

5. We have seen the reply filed by the respondents and also heard Shri George Paracken, learned counsel. He has submitted that the discrepancies, if any, were minor in nature, as noted by the enquiry officer himself, and these have been adequately taken

y/s.

care of by the competent authority while passing the impugned punishment order. He has submitted that there is no doubt that the applicant has been given all reasonable opportunity to defend his case during the departmental enquiry proceedings and the Court should not sit as a Court of appeal either to reverse the enquiry officer's findings, or arrive at a different conclusion from that of competent authority who has taken a particular decision in the facts and circumstances of the case. He has also submitted that taking into account the totality of the facts and circumstances of the case the respondents themselves have taken a lenient view in the matter and he has, therefore, prayed that there is no merit in the OA and the same may be dismissed.

6. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

7. The contention of Shri Shyam Babu, learned counsel for the applicant that because of certain discrepancies on facts as brought out by the prosecution witnesses in the departmental proceedings, the impugned penalty orders are vitiated, cannot be accepted in the facts and circumstances of the case. We note that the enquiry officer himself, in his report dated 11.6.1995, has taken into consideration the 'minor discrepancies' which he has attributed to various factors like the educational background, power of observation and retention, and mental condition of the witnesses. He has also referred to the presence of the police and the circumstances in which the case had occurred and was being investigated. Apart from this, we note that the competent authorities were well aware of the evidence

13

and the documents which were placed before them and have fully applied their mind to the situation. Therefore, in the circumstances, there appears to be no justification for our interference as if we are sitting as a court of appeal or to impose our decision for that of the competent authority. We are also satisfied that the applicant has been given adequate and reasonable opportunity to defend his case and cross-examine the witnesses. We are also satisfied that this is not a case of no evidence but a case where there exists some evidence, on the basis of which the respondents could arrive at the decision they have taken. Therefore, under the power of judicial review the Tribunal exercises in such matters, it is not permissible to reappraise the evidence in the manner suggested by the learned counsel for the applicant.

8. In the facts and circumstances of the case the observations of the Hon'ble Supreme Court in Khilli Ram's case (supra) relied upon by the applicant would not appear to be applicable to the present case, having regard to the catena of later judgments of the Hon'ble Supreme Court in Union of India Vs. Parma Nanda (AIR 1989 SC 1185), Government of Tamil Nadu and another Vs. A.Rajapandian (AIR 1995 SC 561) and State Bank of Patiala and others Vs. S.K.Sharma (JT 1996 (3)SC 722) that in exercise of the powers of judicial review the Tribunal should not sit as a Court of appeal to reappraise the evidence or substitute its own decision for that of the competent authority unless there is justification for interference where it is arbitrary or the decision is perverse.

9. Another ground taken by the applicant's

18/

13

counsel is that the impugned punishment order dated 6.7.1995 has a cumulative effect which is not permissible under the Rules. However, this argument is stated only to be rejected in view of the Full Bench judgment of the Tribunal in A.S.I. Chander Pal Vs. Delhi Administration and another (OA.No.2225 of 1993) dated 18.5.1999.

10. In the result for the reasons given above we find no ground to justify any interference in the matter. The O.A. fails and is accordingly dismissed. No order as to costs.

R.K. Ahooja  
(R.K. Ahooja)  
Member (A)

rkv

Lakshmi Swaminathan  
(Mrs. Lakshmi Swaminathan)  
Member (J)