

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.No.1142/96

New Delhi the 15th October, 1999.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI S.P.BISWAS, MEMBER(A)

Shri Murari Lal son of late Shri
Balwant Singh, resident of 145,
Sector 3, Type-IV, Sadiq Nagar,
New Delhi.

..Applicant

(By Advocate Shri P.P.Khurana)

vs.

The Union of India through the
Secretary to the Government of India,
Ministry of Personnel, Public
Grievances and Personnel Training,
North Block, New Delhi.

..Respondent

(By Advocate Shri K.R.Sachdeva)

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This application is directed against the order dated 29.3.1996 issued in the name of the President imposing on the applicant a penalty of compulsory retirement with no reduction in compulsory retirement pension. The factual matrix in a nutshell is as follows.

2. The applicant joined the Central Bureau of Investigation(CBI for short) as Deputy Superintendent of Police in the year 1972. He was promoted as Superintendent of Police in March,1982. By order dated 28.12.90 he was placed under suspension as a disciplinary proceedings against him was under contemplation. A charge-sheet dated 28.12.90 containing the following Articles of charges was served on him.

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"Article -I - That Shri Murari Lal while functioning as SP/ACU.III, New Delhi in the month of March 1990, committed gross misconduct and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant in as much as while Shri Murari Lal had gone to Calcutta to supervise investigation of RC-1(A)/90-ACU.III he, on 23.3.90, at Calcutta posed himself as Mr. Jha, SP/CBI to one Shri Neeraj Jain and demanded from him a sum of Rs. 2 lacs as illegal gratification after putting Shri Neeraj Jain and his mother Smt. Sushila Jain under threat of arrest, whereas, Shri Murari Lal knew that Shri Neeraj Jain was not an accused in RC-1(A)/90-ACU.III and also knew that as per H.O. orders Smt. Sushila Jain though an accused was not be arrested. Again on 25.3.90 said Shri Murari Lal had a telephonic conversation with the said Neeraj Jain about the mode of the payment of said illegal gratification.

Article-II - That Shri Murari Lal, on 25.3.90 at Calcutta promised to show undue favour to said Shri Neeraj Jain by promising to help and manage the bail of his brother Shri Rajiv Jain at Delhi who was arrested at Calcutta on 23.3.1990 in the said case and was then in Police custody of the I.O.

Article-III - That Shri Murari Lal stayed in the NIC Guest House at Alipore Estate on Alipore Road, Calcutta from 1900 hours on 24.3.1990 to 12.30 hours on 25.3.90, but did not record any entry in the Register of the Guest House in order to suppress his said stay at the Guest House for ulterior motives."

As the applicant denied the charges an enquiry was held. The enquiry officer submitted a report without examining the principal complainant on the basis of whose complaint the proceedings against the applicant was initiated, finding the applicant not guilty. The disciplinary authority on a consideration of the report ordered a further enquiry to be held. Thereafter a further enquiry was held and Sri Neeraj Jain the principal complainant was examined as a witness. After the further enquiry, the enquiry officer submitted his report with a finding that it was proved that the applicant threatened Smt. Sushila Jain and Mr. Neeraj Jain with arrest with ulterior motive and that the applicant did not make entry in the register of the guest house where he stayed.

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A copy of the enquiry report was furnished to the applicant and his representation was obtained. The President on a consideration of the report and the representation reached a tentative conclusion that the imposition of a major penalty on the applicant was warranted. The matter was referred to the Union Public Service Commission (UPSC for short). The UPSC vide their letter dated 8th September 1995 recommended the exoneration of the applicant. The disciplinary authority found that the recommendation of the UPSC was based on objections which are too technical in nature and that from the evidence adduced at the enquiry, the charge that the applicant had threatened the complainant and his mother with arrest with ulterior motives was established. Therefore the UPSC was requested to reexamine and reconsider the issue. The UPSC on reconsideration reiterated its stand. The disciplinary authority on a consideration of the entire materials which are relevant came to the following conclusion:

"(a) The complainant who could have retracted the complaint in the entirety stood by his allegation that Shri Murari Lal had threatened him with arrest of himself and his mother.

(b) Shri Murari Lal had held out the threat of arrest of the complainant and his mother whereas actually there was no such orders, reflects an ulterior motive.

(c) Though there is a strong underlying motive for the threat, the charge of demand of bribe by Shri Murari Lal has not been established.

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(d) Though the charge relating to no entry in the records of the guest house, has been proved, the charge of malafide has not been established."

On the basis of the above conclusion, the disciplinary authority has imposed on the applicant the penalty of compulsory retirement. The applicant is aggrieved by the impugned order and has filed this application seeking to have the impugned order set aside. The applicant has taken various grounds including that the enquiry was not held in accordance with the rules and that the finding is not based on evidence at all.

2. We have heard Shri P.P.Khurana, the learned counsel of the applicant and Sri K.R.Sachdeva, the learned counsel appearing for the respondents at considerable length.

3. Shri P.P.Khurana argued that the action of the disciplinary authority in directing the enquiry officer to hold a further enquiry was not justified. Sri Neeraj Jain having been dropped from the list of witnesses, there was no justification for directing a further enquiry for the purpose of examination of Shri Neeraj Jain. ^{argued Sri Khurana.} In Union of India & others vs P.Thayagarajan 1999(1) S.C. S.L.J. 28, the question whether the disciplinary authority can direct a further enquiry to be held has been considered. It was held by the Apex Court that there was nothing improper in doing that. Therefore the argument of the learned counsel of the applicant that the action of the disciplinary authority in directing a further enquiry is invalid has no substance.

4. Sri Khurana with considerable tenacity argued that the finding of the disciplinary authority that the applicant is guilty of part of the charge is based on no evidence at all. He further argued that the disciplinary authority could not have totally ignored the consistent and well-reasoned advice of

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UPSC that the applicant should be exonerated as there was no evidence to support a finding of guilt. The aspect of the charges which have been held to be proved against the applicant is that the applicant threatened the arrest of Sri Neeraj Jain and his mother with ulterior motives and that the charge relating to entry in the records of the guest house was proved, though malafide has not been established. The finding that the applicant had threatened to arrest Sri Neeraj Jain and his mother is based only on the statement of Sri Neeraj Jain. We have gone through the statement of Sri Neeraj Jain not with a view to reappreciate the evidence, but with a view to satisfy our judicial conscience as to whether there are any evidence at all which would warrant a finding of guilt especially in the light of the fact that the UPSC has twice recommended exoneration of the applicant on the ground that there was no evidence which would permit a conclusion of guilt. It is seen that Sri Neeraj Jain has in his chief examination itself stated that the complaint given by him against Sri Murari Lal, the applicant was written by him as dictated by some C.B.I. officers from Delhi. He further stated that as a C.B.I. officer from Delhi promised to help him and that was why he gave the complaint as directed by them. He has not given any evidence implicating the applicant. Therefore the presenting officer declared him hostile and cross-examined him. The only evidence on the basis of which a finding is seen to have arrived at that the applicant threatened to arrest Sri Neeraj Jain and his mother is following statement of Sri Neeraj Jain:

" Shri Murari Lal who had taken me to CR avenue subsequently allowed me to go from there. He did not give me any instructions. But he had told me in the van that my mother Smt. Sushila Jain and myself will be arrested and taken to Delhi. I would like to clarify that actually I was allowed to go home where the raid was continuing."

(emphasis added)

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It is not possible to discern from the above statement that Sri Murari Lal had held out any threat. Even if the applicant a C.B.I. officer who had gone for investigating a case had told that Mrs. Sushila Jain and Sri Neeraj Jain would be arrested, it cannot be held to be a threat, much less a threat with an ulterior motive. The disciplinary authority itself has found that for want of evidence, the demand of a sum of Rs.2 lacs as illegal gratification has not been established. The gravamen of the charge against the applicant is that he demanded an illegal gratification of Rs.2 lacs after putting Sri Neeraj Jain and his mother Smt. Sushila Jain under threat of arrest. While the demand for illegal gratification has been found to be not established then the gravamen of the charge disappears. We are of the considered view therefore that the finding that the applicant with ulterior motives threatened Sri Neeraj Jain and his mother with arrest is not based on any evidence at all as opined by the UPSC. The testimony of Sri Neeraj Jain could not have been given any credence at all as he stated that it was at the behest of the C.B.I. officers from Delhi that he wrote the complaint against the applicant as dictated by them expecting help from the C.B.I. officers. Further even if the evidence is believed, there is nothing which would establish any part of the charge against the applicant. As the evidence of the caretaker of the guest house showed clearly that the applicant had asked for the register for making entry when he made payment and that the caretaker said that it was not required, the charge that the applicant failed to make entry in the register also cannot be held to be established. Even if there is an omission to make an entry in the register of the guest house, that does not amount to a misconduct as such an omission is bonafide and without any ulterior motive.

5. In the light of what is stated above, we find that the

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A finding of the disciplinary authority that the applicant is guilty of the charges, is baseless and therefore, the penalty of compulsory retirement imposed on the applicant is unsustainable. In the result the application is allowed. The impugned order is set aside. The respondents are directed to reinstate the applicant with all consequential benefits including arrears of pay and allowance. The respondents are directed to treat the period of suspension of the applicant as period spent on duty for all purposes and to open the sealed cover containing the recommendations of the D.P.C. held in the year 1994 and 1995 and to act on the recommendations of the D.P.C. and to promote the applicant with effect from the date of promotion of officers immediately junior to the applicant, if the D.P.C. had recommended his promotion with all consequential benefits. The above direction shall be complied with within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.


S.P. BISWAS
MEMBER(A)


A.V. HARIDASAN
VICE CHAIRMAN

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