

Central Administrative Tribunal: Principal Bench

O.A. No. 1174/96

New Delhi this the 11th day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri V.K. Majotra, Member (A)

Shri H.P. Singh
S/o Shri M.S. Marwah,
R/o 47/5, East Patel Nagar,
New Delhi.

-Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Commissioner of Police,
Delhi Police,
Police Head Quarters,
I.P. Estate,
New Delhi-110 002.
2. Deputy Commissioner of Police,
IGI Airport, New Delhi.
3. Additional Commissioner of Police,
(Operational), Police H.Q. I.P. Estate,
Delhi.
4. Shri Ramesh Sapra,
Inspector Delhi Police,
1st Battallion DAP,
Delhi.
5. Shri Sunder Dev,
Sub-Inspector, Delhi Police
I.G.I. Airport Delhi.

-Respondents

(By Advocate: Shri Ram Kanwar)

O R D E R

By Shri V.K. Majotra, Member (A)

The applicant was placed under suspension vide order dated 5.6.91 and a penalty of forfeiture of five years approved service permanently with cumulative effect entailing reduction of pay by five stages i.e. Rs. 2,300/- to Rs. 2000/- per month in the time scale of pay Rs. 2000-60-2300-EB-75-3200 was imposed against him vide order dated 15.3.1995 passed by the Additional Commissioner of Police in a departmental enquiry. A joint D.E. was ordered against the applicant and one Shri

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Sunder Dev S.I. vide order dated 14.10.91 on the allegation that the applicant while posted as SHO, Geeta Colony, recorded a D.D. entry against SI Sunder Dev. Shri Sunder Dev also recorded a D.D. No. 24 dated 23.2.90 giving details of case FIR No. 15/90 under Section 308/304/34 IPC, P.S. Geeta Colony. On knowing the said D.D. entry, the applicant is alleged to have recast the entire Roznamcha w.e.f. 14.2.90 by obtaining the signatures of various police officers, who had functioned as Duty Officers, during the relevant period. It is alleged that signatures of some of the police personnel were forged. S.I. Sunder Dev is also alleged to have joined the conspiracy and wrote a fresh and false D.D. entry on 23.2.90 at Sr. No. 24-B, in place of original entry, about some other incident with an ulterior motive. Whereas after completion of the departmental enquiry, a punishment of forfeiture of 5 years approved service permanently etc. was awarded to the applicant, a punishment of forfeiture of two years approved service permanently was awarded to S.I. Sunder Dev. The appeal of the applicant against the said order of punishment was rejected by the Appellate Authority i.e. Commissioner of Police. It has been alleged that the findings of the Enquiry Officer are perverse as there is no evidence on record to prove the charge against the applicant. Evidence of certain PWs who have denied any charge or rewriting of Roznamcha is stated to have been brushed aside by the Enquiry Officer. The punishing authority is also alleged to have

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passed the impugned order mechanically without application of mind. The applicant has sought the following reliefs:-

- "a) Quash the order dated 5.6.91 placing the applicant under suspension and also the subsequent order of punishing authority being Annexure-G dated 15.3.95 and the order of the appellate order dated 2.2.96 (Annexure-H).
- b) To direct the respondents to put the applicant on duty forthwith and to pay him the consequential benefits or arrears and salary etc.
- c) Any other relief which this Hon'ble Tribunal may deem fit and proper, keeping in view the circumstances of the case in favour of the applicant".

2. The prayer relating to quashing the suspension order and also to stay the D.E. against the applicant was not allowed vide order dated 31.5.96, the same having been a part of the earlier OA 1730/92. In any case, the suspension of the applicant was revoked and he was reinstated w.e.f. 23.6.97. Thus the only relief which is being considered in the present OA is 'C' above, i.e. "Any other relief which this Hon'ble Tribunal may deem fit and proper, keeping in view the circumstances of the case in favour of the applicant".

3. In their counter, the respondents have stated that charges against SI Sunder Dev were not substantiated in the D.E. However, they were substantiated against the applicant and following due procedure in the enquiry, he was awarded the aforestated punishment which was up-held in Appeal.

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4. According to the respondents, the statements of PWs 3,4,8 and 9 in the DE have established the charge against the applicant and the applicant has not alleged any previous grudge, bias or background against these PWs. We have heard the learned counsel of both sides and carefully considered the material made available by both sides.

5. Under Punjab Police Rules which are applicable to Delhi Police in the matter of Maintenance of Daily Diary at Police Station, the provision relating to the Daily Diary is as follows:-

22.48 Register No.II

"The Daily Diary shall be maintained in accordance with section 44 of the Police Act. It shall be in Form 22.48 (1) and shall be maintained by means of carbon copying process. There shall be two copies. One will remain in the police station register and the other shall be despatched to a Gazetted Officer to be designated by the Superintendent of Police or to the Superintendent of Police himself every day at the hour fixed in this behalf".

6. Shri Shyam Babu, learned counsel of the applicant produced a proto-type Daily Diary register containing 100 pages, each page in duplicate bearing page Nos. on the left hand side and the book Number on the right hand side. The book number is the same on each page as it relates to the whole register. Shri Shyam Babu maintained that it is not possible to remove a few pages of the daily diary register and replace them by fresh

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pages. Thus, either the whole register can be re-written or it cannot be changed at all. He stated that though the charge against the applicant is to have recast the daily diary relating to the relevant period, several PWs and Defence witnesses have stated to have written the entries in their own hand and the same have been signed by them. By this, he contended that if the daily diary had been re-written by the applicant, these witnesses would not have stated that entries were written and signed by them.

7. When the respondents did not show the main copy of the daily diary with the respondents/vigilance, Shri Shyam Babu maintained that no Roznamcha has been missing. Actually, copies taken of the Roznamcha by the respondents and the original which the respondents are not producing are the same and the original Roznamcha has not been recast by any one.

8. Shri Shyam Babu learned counsel has also drawn our attention to order against SI Sunder Dev in which the Disciplinary Authority had stated "I have perused all the documents and found that SI wrote the DD Entry without any malafide intention as he wanted to highlight the facts to appear before senior officers. Though the writing of a DD entry against his senior is against the norms of discipline, the gravity of misconduct is diminished taking into account the circumstances under which

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he wrote it. The punishment of Censure would be sufficient to meet the end of justice. Therefore, the conduct of Shri Sunder Dev, No. D/2000 is censured for the above said lapse". The learned counsel Shri Shyam Babu maintained that on the basis of the same daily diary which is stated to have been recast and forged in the matter of the applicant was relied upon by the respondents in the case of SI Sunder Dev who was let off with the minor most punishment.

9. The learned counsel of the respondents Shri Ram Kanwar contended that the original Roznamcha which was in the custody of the applicant had been destroyed by him. Therefore, the question of its production does not arise at all. According to him, the applicant had prepared the Roznamcha afresh and obtained signatures of some of the concerned personnel. He stated that some of the PWs have stated in the enquiry that the signature on the daily diary are not theirs. The learned counsel of the applicant Shri Shyam Babu contradicted the contention of Shri Ram Kanwar that destruction of the Roznamcha at the hands of the applicant is not a part of the charge-sheet. Therefore, this issue cannot be raked up after the finalisation of the D.E. before the Court. We are in-agreement with the learned counsel Shri Shyam Babu that when the destruction of the Roznamcha at the hands of the applicant is not a part of the charge, this allegation cannot be raised before us and ^h said to have been established. Learned counsel of

[Signature]

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the respondents also stated that if the handwriting experts were consulted, the truth would have come out whether any of the witness had rewritten and signed the recast Roznamcha. It is futile to talk about some action which could have been taken but was not taken by the respondents.

10. In the D.E. direct evidence was led by both sides. Some of the PWs have supported the contention of the applicant and the others have gone against the respondents. This Tribunal has limited powers and cannot delve deep into the evidence and reappraise the same.

11. We are convinced by the demonstration made by Shri Shyam Babu that the daily diary register can either be wholly re-written or not at all. The explanation of Shri Shyam Babu appears to be plausible and we hold that the charge against the applicant that he had recast the daily diary for a certain period could not be established. Shri K.C. Devedi ACP was not able to explain subsequently before the Enquiry Officer "as to which book was found missing or tampered with which he came to know during the course of enquiry". The ACP stated only this much "this is a matter of record".

12. Giving our careful consideration to the points made by both sides, we are inclined to go alongwith Shri Shyam Babu and in view of the plausibility that the daily diary register can either be wholly re-written or not at all, in

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ability of the ACP to indicate as to which book was found missing or tampered with during the course of his enquiry, when the respondents have not included destruction of daily diary register as part of the charge and SI Sunder Dev has been held guilty of his charge on the basis of the same daily diary register which is stated to have been recast, we are inclined to hold that the respondents had failed to bring home the charge against the applicant.

13. Having regard to the reasons stated above, the OA succeeds. Punishment imposed against the applicant vide order dated 15.3.95 and Appellate order dated 2.2.96 are set aside with consequential benefits. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)
cc.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)