

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA.No.1654 of 1996.

Dated this 25th day of February 2000

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HON'BLE MR.JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

Const. Sudhir Kumar No.9830/DAP
C/o Shri Girwar Singh
R/o A-1/4 Bhajan Pura
Delhi-110053. Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. Union of India, through
its Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. The Additional Commissioner of
Police (Operations)
Police Headquarters
M.S.O. Building
I.P.Estate
New Delhi.
3. The Deputy Commissioner of
Police/F.R.R.O.
Police Headquarters
Hans Bhawan
I.T.O.
I.P.Estate
New Delhi-110002. Respondents

(By Advocate: Shri Rajan Sharma with
Shri Rajan Sharma)

O R D E R (Oral)

Mrs Shanta Shastry, M(A)

The applicant who was working as a Constable in the Delhi Police, was proceeded with against through a departmental enquiry for demanding money from ^{a com h} complainant and was punished with forfeiture of five years' approved service with consequent reduction in his pay. His pay was reduced from Rs.1090 to Rs.990 in the time scale of pay for a period of five years. Also no

increments were to be earned during the period of reduction and on expiry of this period the reduction would have the effect of postponing his future increments of pay. His suspension period was treated as period not spent on duty. The applicant had preferred an appeal. The same was rejected on 6.7.1995. The applicant has impugned these orders seeking to set aside the same and to direct the respondents to restore his reduced pay and withheld increments and also to set aside the order of suspension and to treat the period of suspension as spent on duty with pay and allowances.

2. The allegations against the applicant along with another delinquent SI Girwar Singh who is the father of the applicant were that on 14.10.1993, at about 8.30 p.m. S.I. Girwar Singh and Constable Sudhir Kumar, i.e. the applicant came to Old Delhi Main Railway Station and asked Shri Abdul Rehman while he was boarding the train 'Shaheed Express' to search his suitcase which contained Rs.10,89,000/-. They questioned about the amount carried by him and later on demanded to part the money if he wanted to go. When Shri Abdul Rehman refused to budge and turned down their request, they handed him over to the local police of Police Station Delhi Main in order to establish their honesty and devotion to duty after making a concocted version. The local police of P.S. Delhi Main after joint and sustained interrogation of Abdul Rehman realised that there was some foul play in the version

narrated by the S.I. and the applicant. They found that both S.I. Girwar Singh and the applicant intended to extort money from Abdul Rehman and with this mal^{icious} intention they had followed the complainant. The learned counsel for the applicant has raised several objections regarding the irregularities committed in the enquiry. According to the learned counsel for the applicant, the applicant had demanded to summon the defence witnesses who were serving police officers and the Enquiry Officer did not summon them but asked the applicant to get them on his own. The applicant had sensed bias of the Enquiry Officer and had requested to change the Enquiry Officer, but the same was not heeded to. The learned counsel for the applicant also states that the F.R.R.O. was not competent to order any enquiry against him as he was not notified as Deputy Commissioner of Police at the time the order was issued. Also the punishment awarded to the applicant is a multiple punishment and in contravention of the Delhi Police Act and Rules. The applicant also states that the enquiry is vitiated on the ground that the preliminary enquiry was held by the Assistant Commissioner of Police at F.R.R.O. and on his report a regular departmental enquiry was ordered. But the copy of the preliminary enquiry report was not supplied to the applicant and several documents demanded by the applicant were not provided to him. Further during the course of enquiry also, the applicant could not avail of the defence assistance. On some occasions his cross

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examination suffered in the absence of defence witness. Lastly the Enquiry Officer during the course of enquiry assumed the role of a prosecutor by cross examining the prosecution witnesses. The applicant therefore has prayed that the impugned orders may be quashed. Also according to the applicant the appellate order is a non speaking order without application of mind.

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3. The learned counsel for the respondents has submitted that the enquiry was conducted properly. It is not for the Enquiry Officer to summon the defence witnesses. Instead of ten days' time the applicant was given twenty days' time to summon the defence witnesses. The applicant was provided all the relevant documents and there was enough proof to establish the intention of the applicant to extort money from the complainant, viz. Shri Abdul Rehman.

4. We have listened carefully to the learned counsel for the applicant as well as the respondents and have also perused the relevant impugned orders and the enquiry report. It is not for us to appreciate the entire evidence. However, we find that even though the rules do not provide for summoning of defence witnesses by the Enquiry Officer, in the present case since the defence witnesses happened to be serving police officers unless they could be relieved by the respondents the applicant could not have availed of their services just by merely summoning him. Therefore the applicant had

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requested the Enquiry Officer to summon the defence witnesses. We do not think that there is anything wrong in his requesting as it is finally for the respondents to have relieved the concerned police officers to be treated as defence witnesses. In normal course this should have been the stand of the respondents. In this particular case, in the interest of justice, the Enquiry Officer should have summoned the defence witnesses which according to the applicant would have strengthened his case. We find from the enquiry report, as pointed out by the learned counsel for the applicant, that two prosecution witnesses, namely Prosecution Witness No.2 S.I. Narender Singh and Prosecution Witness No.10 Shri Abdul Rahman were both cross examined by the Enquiry Officer. According to the Delhi Police (Punishment and Appeal) Rules, ¹⁹⁸⁰ the Enquiry Officer cannot cross examine the prosecution witnesses as well as defence witnesses. He can seek some clarification, but cannot cross examine with a view to fill in the gaps. The same has been done in this case. We, therefore, agree with the the applicant that the Enquiry Officer had no business to cross examine the witnesses. The learned counsel for the applicant has cited a judgment of this Tribunal dated 19.1.2000 in OA.No.455/96 wherein it was held that the Enquiry Officer cannot assume the role of a judge and prosecutor and that it would vitiate the entire proceedings being violative of principles of natural justice. The Tribunal had relied upon the judgement in the case of J. Singh Vs Lt. Governor through Commissioner of

Police and Ors. reported in 1991 (16) ATC 192 where the learned judge relying upon the judgement of Babu Singh Vs UOI ATR 1986(1) CAT 195 and P. Babu Vs. UOI 1987 (4) ATC 727 had held the same view. On this ground the impugned orders of the disciplinary authority and appellate authority were quashed. The learned counsel for the applicant has also relied upon another judgement of this Tribunal in OA.259/96 dated 10.12.1998 in the matter of Braham Prakash Vs UOI & Ors. wherein the issue of competence of the authority was questioned. The issue was whether the F.R.R.O. was at all competent to initiate disciplinary proceedings and to pass the punishment order. The contention of the learned counsel for the applicant was that the F.R.R.O. is not a police officer under the Delhi Police Act and therefore he could not have acted as disciplinary authority in relation to the applicant in that case, i.e. that is police Constable. On this ground itself, the proceedings were set aside. As already pointed out by the learned counsel for the applicant that an appeal has been made against this order in the High Court and the same is pending. However for our purpose till the matter is decided by the Hon'ble High Court, we are bound by this order.

5. As far as the relevant documents are concerned, the same has been dealt with by the Enquiry Officer as well as the disciplinary authority in their orders and they have clearly stated that the applicant was allowed to make

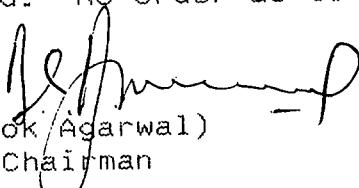
notes of the various documents as per the extant rules. The learned counsel for the applicant has also said that the complainant had not made any allegations against them first time when he was handed over to Shri Narendra Singh who was on patrol duty at that time on the Railway Platform. We find that the whole issue is whether the applicant really demanded money from Shri Abdul Rehman in this case. There is nothing to show this, except the statement of the complainant that the applicant had demanded money. The complainant had given this in this statement during the interrogation and not immediately after being arrested. This is not fair as this is done ~~behind~~ the back of the applicant. Had the applicant really intended to get the money from the complainant he would not have handed over the complainant to the police authorities. Also a reward is given to the informer. The applicant could have easily got the 20% amount by merely reporting the complainant to the police. We do not find that there is enough evidence to establish the allegations against the applicant. As already discussed, certain irregularities have occurred in the disciplinary proceedings carried out particularly regarding the cross examination by the Enquiry Officer, not summoning of the defence witnesses thus depriving the applicant to put forth his case strongly, the orders being not issued by a competent authority and also we find that bias is gleaned from the fact that the Enquiry Officer has gone out of his brief to cross examine the prosecution witnesses. We,

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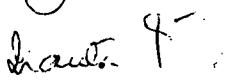
therefore, are of the view that the enquiry is vitiated and, therefore, quash the enquiry report as well as the order of the disciplinary authority dated 10.3.1995 and the order of appellate authority dated 6.7.1995. Consequently the applicant shall be entitled to restoration of the reduced pay and withheld increments and to treat his suspension period as spent on duty with pay and allowances.

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6. In the facts and circumstances of the case, the OA is allowed. No order as to costs.


(Ashok Agarwal)

Chairman


(Mrs. Shanta Shastry)

Member(A)

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