

Central Administrative Tribunal
Principal Bench

O.A.No.2533/96

Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri S.L.Jain, Member(J)

New Delhi, this the 11/ day of April, 1999

Som Pal Singh(1744/N)
Ex-Constable
s/o Sh. Maha Singh
r/o FC-20(Type-I)
Teen Murti Police Compound
New Delhi. ... Applicant

(By Shri Shyam Babu, Advocate)

Vs.

1. Commissioner of Police, Delhi
Police Headquarter, I.P.Estate
New Delhi.
2. Addl. Commissioner of Police (Northern Range)
Police Headquarter
I.P.Estate
New Delhi.
3. Addl. Dy. Commissioner of Police
North District
P.S.Civil Lines
Delhi.
4. Dy. Commissioner of Police (HQ-III)
Police Head Quarter
I.P.Estate
New Delhi. ... Respondents

(By Shri Vijay Pandita, Advocate)

O R D E R

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

The applicant was employed as a Constable in Delhi Police, when departmental proceedings were initiated against him by an order dated 30.11.1989 of Additional Deputy Commissioner of Police, North District on the allegation that on 13.8.1989 he took one Ms.Kusum and Mr.Raj Kumar, r/o Vill. Sarai Khuwaja, Faridabad, Haryana in a T.S.R. from ISBT to India Gate by using his official position and threats of arrest. He dropped Raj Kumar from the T.S.R. at India Gate with some excuse and he himself took the girl to a deserted place in Chanakya

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Puri area where he tried to molest her but on raising alarm the constable ran away leaving the girl behind. Later on, the staff of P.S.Chanakyapuri took the girl to Police Station and arranged for sending the girl to her home. The Constable was also identified by the girl in front of Inspector Jai Bhagwan, SHO/Kashmere Gate and Sh. P.S. Bhushan A.C.P./Sadar Bazar.

2. The Enquiry Officer, Inspector Tilak Ram submitted his findings dated 23.5.1990 holding the defaulter guilty of charge. The disciplinary authority thereafter by an order dated 11.7.1990 imposed the penalty of removal from service with immediate effect. The applicant filed an appeal which was also dismissed by the Additional Commissioner of Police. Thereafter the applicant filed an OA No.1416/91. By order dated 28.8.1995 the Tribunal remanded the case to the appellate authority in the following terms:

"In view of the facts and circumstances, the application is allowed in the manner that the order of disciplinary authority is not interfered with but it is left to the appellate authority to consider the same particularly in the light of the averments made in the O.A./Rejoinder and arguments advanced that there was no identification held of the applicant at P.S.Kashmeregate or elsewhere by the victim Kusum and Raj Kumar to corollate the alleged misconduct of the applicant of enticing away both of them in the night of 13/14th August, 1989 from I.S.B.T. taking them to India Gate leaving Raj Kumar in the way and going with the girl Kusum to the P.S.Chanakayapuri, New Delhi where the staff of P.S.Chanakayapuri apprehended the girl and the applicant is alleged to have escaped. All these facts need to be looked into from the D.D. of 13/14 the August, 1989 and of 16.8.1989 of P.S.Chanakayapuri, Kashmere Gate, I.S.B.T. We are not

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expressing any opinion on the merit of the misconduct alleged. The appellate authority should pass a speaking order after hearing the applicant, if so desired, following the rules and regulations and thereafter pass an order on the basis of available evidence and record. The above exercise will be done within a period of six months from the date of receipt of this order. Applicant shall be free to assail the order, if aggrieved, according to law. The application is disposed of accordingly leaving the parties to bear their own costs."

3. The Additional Commissioner of Police passed

an order dated 27.2.1996, Annexure-B after reconsideration of the case as per the directions of the Tribunal and came to the conclusion that the charge levelled against the applicant was fully proved. The appeal was accordingly rejected and the punishment imposed by the disciplinary authority was confirmed. The applicant thereafter filed a revision petition also before the Commissioner of Police which was also rejected by an order dated 22.11.1996.

4. This has lead to the present round of litigation. Shri Shyam Babu, learned counsel for the applicant contended before us that the impugned orders of disciplinary authority, appellate authority and the revisional authority were liable to be quashed on the basis of the observations made by this Tribunal in OA No.1416/91. He pointed out that the Tribunal had therein noted that the applicant's case was that there was no identification held of the applicant at P.S.Kashmeregate or elsewhere by the victim Kusum and Raj Kumar to correlate the alleged misconduct of the applicant of enticing away both of them in the night of 13/14th Aug., 1989 from ISBT. The learned counsel for the applicant

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drew our attention to the observation made by the Tribunal that it was necessary in this case to find out whether there was any identification memo or any report of identification noted in DD of 13/14th August, 1989 and of 16.8.1989. The learned counsel submitted that in Para-6 of the order the appellate authority has admitted that "neither identification memo was prepared nor any entry was made in the DD". It was the contention of the learned counsel that in view of this position, there was no evidence against the applicant more so when there was an entry in the DD No.10 of P.S., ISBT that the applicant had rung up the Police Station at 2.30 P.M. to inform that he could not come on duty because he was ill and a medical certificate will follow. It was further argued that Ms.Kusum had not named the applicant in her statement recorded in DD No.88 on 14.8.1989. On 16.8.1989 the applicant was ill and this fact was noted in the DD No.10 of the date. Now that it had been established by the Additional Commissioner of Police that there was neither any identification memo nor any entry in the DD that such proceedings had taken place, clearly there was no link established between the applicant and the alleged crime, more so when both Ms.Kusum and Raj Kumar had in the disciplinary proceedings denied that the applicant was the Constable in question.

5. We have considered this point carefully but are unable to agree with the argument of the learned counsel for the applicant. Reappreciation of evidence is not a part of the judicial review and judicial intervention is called for only when it is a case of no

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evidence. While there was no identification memo or any entry in the DD, there were statements by two witnesses one by SHO, Kashmire Gate and the other of Assistant Commissioner of Police that Ms. Kusum had identified the applicant in their presence. It was also concluded that the DD No.10 of 16.8.1989 was managed by the applicant. Whether the appellate authority should have relied on the deposition of SHO and ACP or whether on the assessment of the evidence the Court might have arrived at a different conclusion are questions outside the scope of the judicial review, in terms of the law laid down by the Supreme Court in various judgments including Shri B.C.Chaturvedi Vs. Union of India, 1996(32) STC 44, Union of India Vs. Parma Nanda, AIR 1989 SC 1185 and Govt. of Tamil Nadu Vs. K.N.Ramamurthy, JT 1997(7) SC 401.

6. It was also urged by the learned counsel for the applicant that the disciplinary action against the applicant was ab-initio void as it was not in accordance with Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980. This rule reads as follows:

"In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

7. It was contended by the learned counsel that the order of the Additional Deputy Commissioner of Police dated 30.11.1989 was without reference to and without obtaining the orders of the Additional Commissioner of

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Police. He argued that before the notification of Delhi Police(Punishment and Appeal) Rules, 1980 the Punjab Police Rules were in force in Delhi. Rule 16.38 of Punjab Police Rules had an identical provision that immediate information of any complaint indicating the commission by a police officer of a criminal offence should be given by the Suptd. of Police to the District Magistrate who will decide whether the investigation of the compliant will be done departmentally or by a magistrate. The learned counsel for the applicant cited the Judgement of Punjab and Haryana High Court, CWP No.1350 of 1977 in Sarup Singh Vs. The State of Haryana and Others, 1984(1) AISLJ (Punjab and Haryana) 258 in which it was held that the compliance of Rule 16.38 was mandatory and not directory. The same view was taken by the Hon'ble Supreme Court in Union of India Vs. Ram Kishan, SLR 1972(7) SC 11 while concluding that the failure to make a reference to the District Magistrate was a colourable attempt to void the effect of Punjab Police Rule 16.38. In that view of the matter the quashing of the order of dismissal against the police constable was upheld. In the present case as there was no reference to the Additional Commissioner of Police, it was urged that the case of the applicant was prejudiced and therefore the disciplinary proceedings against him were liable to be quashed.

8. While we are in agreement with the learned counsel for the applicant, on the general proposition of law, we do not agree that the provision of Rule 15 of Delhi Police (Punishment and Appeal) Rules, 1980 is identical to Rule 16.38 of the Punjab Police Rules. Rule

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15 of the Delhi Police (Punishment and Appeal) Rules, 1980 makes a distinction between the result of the preliminary enquiry and cases where facts are already available on the basis of specific information, in regard to the nature of default, identity of defaulters, prosecution evidence, and the quantum of default. In the latter case it is provided in Rule 15 that "in cases where specific information covering the above mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally precede a departmental enquiry." This point was also raised before the appellate authority and the Additional Commissioner of Police had concluded that there was no violation of Rule 15(2) as the order of the disciplinary authority was based on a specific information.

9. We are in agreement with the conclusions of the appellate authority. There is no mention in the order dated 30.11.1989 that there was a preliminary enquiry. Nothing has come on record to show that a preliminary enquiry was ordered and had been conducted by a specified official. The mere recording of DD report or the victim identifying the accused police official cannot be deemed to be a preliminary enquiry which in terms of Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 is to be assigned to an officer and includes not only the exercise of fact finding but also assessment of the quantum of fault. Since no preliminary enquiry was held the disciplinary authority was well within under Rule 15 of the Delhi Police (Punishment and Appeal)

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Rules, 1980 to order the disciplinary proceedings without first obtaining the clearance of the orders of Additional Commissioner of Police under Rule 15(2).

In the light of the above discussion, we do not find any ground to interfere in the matter. Accordingly, the OA is dismissed. No costs.

S.L.Jain
(S.L.Jain)
Member(J)

/rao/

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