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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1648/97

New Delhi this the ~~18th~~ Day of May 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri R.K. Aahooja, Member (A)

Shri Sunder Singh,
No. 68D, Sub-Inspector,
Delhi Police,
Son of late Shri Balmukand,
R/o Qr. No. 1, Type III, near ACP
Office, Punjabi Bagh,
New Delhi.

Petitioner

(By Advocate: Shri N. Safya with
Ms. Sushma Ambardar)

-Versus-

1. The Commissioner of Police,
PHQ, MSO Building,
IP Estate,
New Delhi.
2. Addl. Commissioner of Police,
Southern Range, Delhi.
3. Deputy Commissioner of Police,
South West Dist.
Vasant Vihar,
New Delhi.

Respondents

(By Advocate: Shri Jog Singh)

ORDER

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

The applicant a Sub Inspector in Delhi Police was proceeded against in a departmental enquiry along with one other Head Constable. The charge against the applicant was that while he was posted at PS Dabri, one Prem Bansal had broken the locks of the shop of the complainant and removed the articles from the shop, whereas the Court had already awarded a permanent injunction to maintain status quo; the applicant had not only failed in taking legal action against Prem Bansal and to maintain status quo but also had compelled the complainant to enter into a compromise. The Enquiry Officer had found the

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charges against the applicant Officer as proved. This led to the impugned order, Annexure A-1, whereby the applicant was awarded a punishment of stoppage of increment for a period of 2 years with no effect on his future increments. The appeal filed by the applicant was rejected by the impugned order, Annexure B, of the appellate authority.

2. The applicant has assailed the departmental enquiry and the impugned order on various grounds i.e., that the Enquiry Officer did not furnish the copy of the statements of witnesses recorded during the course of the preliminary enquiry to the applicant; he was not informed of his right to engage defence assistant and that after the applicant was transferred the Enquiry Officer and the DCP had lost their jurisdiction. None of these grounds have however been pressed before us and therefore need not detain us any further. The main ground taken before us is that it was the defence of the applicant that he was only the Divisional Officer working under the supervisory control of the SHO, one Hans Raj, and that the applicant had no role whatsoever to play in the detention of the complainant and putting any pressure on him to enter into a compromise. The applicant had alleged that it was the SHO who had dealt with the parties and it was the SHO who had directed him to record the compromise. On the other hand, the prosecution had not produced the SHO during the course of the disciplinary proceedings but the disciplinary authority in its impugned order took the version of

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the SHO into account and on that basis awarded the impugned penalty. The applicant on that basis has sought the quashing of the impugned orders, Annexure A&B.

3. The Disciplinary Authority in his order has observed as follows:

"The undersigned has carefully gone through the complete D.E. file and also heard all the three defaulters in O.R. on 8.9.95. Insp. Hans Raj maintained that the matter was dealt by his subordinates, and that they did not bring the complete facts before him. He added that a proper case was registered against the accused landlord when the facts became clear. His explanation is not satisfactory and hence he is warned to be careful and exercise better supervision over his subordinates.

SI Sunder Singh stated that he was not in the picture at all and that his name was taken only because he was the Division Officer of the area where the incident took place. His contention is not acceptable because the complainant specifically mentioned that the compromise was worked out by the SI and the HC. HC Sher Singh being a lower subordinate pleaded that the decision was not taken at his level. There is some force in his plea.

I perused the findings of the E.O. who held that the charge is substantiated against the defaulters. Agreeing with him, I award a punishment of (i) Stoppage of increment for a period of two years with no effect on his future increments to SI Sunder Singh No. 68/D and (ii) 'Censure' to HC Sher Singh, No. 29/SW."

4. The learned counsel for the applicant had vehemently argued that the above clearly shows that the disciplinary authority was swayed by the explanation of the Inspector Hans Raj that the matter was dealt with by his subordinates and that they did not bring the complete facts before him. Learned counsel for the applicant further argued that Inspector Hans Raj was not produced as a Prosecution

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Witness and thus the applicant had no opportunity to cross examine him and to test the veracity of his statement. He submitted that Inspector Hans Raj was the responsible person and he, the applicant, as a Divisional Officer had no role to play in the matter. This ground was not rebutted by the prosecution as Inspector Hans Raj did not participate in the disciplinary proceedings. On the other hand behind his back the version of Inspector Hans Raj becomes the foundation of the conclusion of the disciplinary authority. This was clearly in contravention in principle of natural justice. The learned counsel thus argued that the impugned order was liable to be set aside.

5. We have carefully considered this above argument. It is correct that the disciplinary authority mentioned the reply given by Inspector Hans Raj in response to the explanation called for from him. While it would have been proper for the disciplinary authority to take up the case of Inspector Hans Raj separately and not as a part of his order in a joint proceeding to which Inspector Hans Raj was not a party, nevertheless the essential point to be seen is whether any prejudice has been caused thereby to the applicant. A mere procedural irregularity by itself cannot be a sufficient ^{cause} for setting aside the order of the disciplinary authority. To do so it would be necessary to show that such an irregularity has caused substantive harm to the interest of the charged officer.

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6. Seen from this view point, we do not find that the applicant has a strong enough case to justify interference on our part. We have perused the report of the Enquiry Officer who states in conclusion:

"I have carefully gone through the statements of PWs, DWS Exhibits and other evidence of file and am of the view that, the 'Charge' against the defaulters SI Sunder Singh No. 68/D & HC Sher Singh No. 29/SW have been 'substantiated'. Moreover, the reluctance on the part of SHO-Dabri also can't be ruled out as discussed in 'Discussion of Charge' as being the SHO, he was the supervisory officer of PS. Dabri and it was his duty to direct his officials concerned to deal with the matter as per law and to take immediate legal action but he failed to do so"

7. The above shows that the Enquiry Officer not only found the conduct of the applicant and the HC to be blame worthy but also observed that the SHO i.e., Inspector Hans Raj could not also be absolved of his responsibilities. The conclusions of the E.O. thus extended beyond the charge against the applicant and further indicated that the supervisory officer was also guilty of dereliction of duty. The disciplinary authority thereafter issued a Memo to the SHO. It is clear from the order of the disciplinary authority that he did not find the explanation of the SHO to be satisfactory and accordingly directed that he should be warned to be careful and to exercise better supervision over his subordinate. In other words he found that the SHO though not formally charged was also guilty. We do not see how such a conclusion could have led the disciplinary authority to inflict the punishment on

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the applicant; on the contrary it is more than ~~its account~~ likely that taking the failure of the SHO to supervise properly, he would have been led to give a lesser punishment than he would have done otherwise to the applicant. We see, therefore, no prejudice caused to the interest of the applicant. The mere mention of the explanation called in respect of Inspector Hans Raj cannot be said to have prejudiced the case of the applicant.

8. The Hon'ble Supreme Court in State Bank of Patiala and ors. Vs. S.K. Sharma JT 1996(3) 722 has held that the violation of procedural provisions have to be judged on the test of prejudice i.e., whether to set aside of the punishment and the entire enquiry on the ground of such a violation be in the interest of justice or would it be its negation? Accordingly the Hon'ble Supreme Court in the aforesaid order laid down that an order of punishment consequent upon a disciplinary enquiry in violation of rules/regulations/statutory provisions governing such enquiries should not be set aside automatically and that Tribunal should conclude whether provision of violation is of a substantive nature. Following the ratio of this judgement, we have to see whether in the present case any substantive prejudice has been caused to the applicant. We find no such prejudice. Therefore, merely because the explanation of Inspector Hans Raj came to be mentioned in the final order relating to the applicant does not render that order illegal.

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9. In the light of the above discussion, we do not find any reason to interfere. Accordingly the OA is dismissed.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

T.N. Bhat
(T.N. Bhat)
Member (J)

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