

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1768/97

New Delhi, this the 16th day of July, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

SI Sunder Dev No. D/2000
S/o Shri Kishan Lal, aged about 40 years,
presently posted at I.G.I. Airport,
R/o H.No. 61, Village-Malak Pur,
Delhi-9 Applicant
(By Advocate: Sh. Shankar Raju)

Vs.

1. Union of India,
Through Its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Commissioner of Police
Police Head Quarters,
I.P.Estate, M.S.O. Building,
New Delhi.
3. Addl. Commissioner of Police,
Operations, Police Head Quarters,
I.P.Estate, M.S.O. Building,
New Delhi. Respondents.
(By Advocate: Sh. Amresh Mathur)

ORDER

Hon'ble Shri T.N. Bhat, Member (J)

We have heard at length the arguments of the learned counsel for the parties and have perused the material on record.

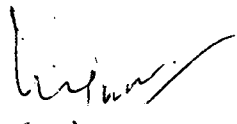
2. The applicant in this OA is a Sub-Inspector in the Delhi Police and he has come to the Tribunal assailing the order of punishment dated 15.3.95 issued by the Additional Commissioner of Police, Delhi as also the

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order dated 4.6.97 passed by the Commissioner of Police rejecting the applicant's appeal. He further assails the order dated 28.12.94 passed by the disciplinary authority, namely, the Additional Commissioner of Police whereby he disagreed with the findings of the Enquiry Officer as also the order dated 16.12.96 by which the applicant's name has been entered in the secret list on the basis of the allegations against him leading to imposition of penalty vide order dated 15.3.95.

3. A disciplinary enquiry was held jointly against the applicant and Inspector H.P.Singh on the following allegations:-

"That on 22/23-2-90 Inspr. H.P.Singh recorded a D.D.Entry against S.I. Sunder Dev No.D-2000. SI Sunder Dev also recorded a D.D. entry No.24 dated 23.2.90 giving details of case FIR No. 15/90 u/s 308/304/34 IPC Inspr. H.P.Singh, the then SHO Geeta Colony, on coming to know of the D.D. entry, panicked and got the entire Rojnamacha w.e.f. 14.2.90 onward, recast by obtaining the signatures of various police officers who had functioned as duty officers during this period. The signatures of some of the police personnel who were on leave etc. were forged. S.I. Sunder Dev also joined the conspiracy and wrote a fresh and false D.D. entry on 23/24.2.90 at Sl. No.24-B, about some other incident with an ulterior motive."



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4. After holding the enquiry, the Enquiry Officer appointed by the disciplinary authority submitted his report dated 21.2.94 in which there was a clear finding that so far as the applicant S.I.Sunder Dev is concerned the charge framed against him is not proved while the charge framed against Inspector H.P.Singh is fully established. When the matter was submitted to the disciplinary authority, the disciplinary authority by the order conveyed to the applicant through a letter dated 28.12.94 disagreed with the findings of the Enquiry Officer and held the charges established against the applicant as well. By the order dated 15.3.95 the disciplinary authority, namely, the Additional Commissioner of Police (OPS) Delhi imposed the penalty of forfeiture of 2 years approved service permanently on the applicant which was to have cumulative effect entailing reduction in pay of the applicant by two stages.

5. The applicant preferred an appeal which also came to be dismissed by the impugned order dated 4.6.97.

6. Subsequently another order was passed by the Dy. Commissioner of Police, New Delhi informing the applicant that his name had been brought on the 'secret list of officers of doubtful integrity.

7. All the above orders have been assailed in this OA mainly on the ground that there was not an iota of evidence connecting the applicant with the alleged

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incident and that there were no grounds for the disciplinary authority to disagree with the findings recorded by the Enquiry Officer.

8. On a careful reading of the impugned orders we notice that it was at the instance of the co-accused, namely, H.P.Singh that the disciplinary authority held the charge established against the applicant as well. It is clearly stated in the order dated 28.12.94 that the disciplinary authority had initially agreed with the findings of the Enquiry Officer but that when the Inspector H.P.Singh appeared before the disciplinary authority and made an oral submission that since the applicant herein had not produced any defence evidence the charge against him also should be taken to have been proved the disciplinary authority accepted this plea of the co-accused. For this he relied upon the alleged silence on the part of the applicant to complain to the senior officers against the Inspector H.P.Singh. According to the disciplinary authority had the applicant herein not been a party to the alleged change in the Daily Diary entry he would have "definitely complained to the officers senior to Inspector H.P.Singh". We notice that not a word has been stated that on the merits of the findings recorded by the Enquiry Officer.

9. That leads us to the findings recorded by the Enquiry Officer. We have gone through the enquiry report including the summary of the evidence and we find that there was no evidence establishing the complicity of the applicant in the alleged tampering/change in the Daily

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Diary entries of the Police Station concerned. The Enquiry Officer has recorded a clear finding that none of the PWS had "even murmured even a single word for and against S.I. Sunder Dev. (co-defaulter)", who is the applicant herein. Thus, manifestly, this was a clear case of no evidence as far as the applicant is concerned.

10. The disciplinary authority appears to have been carried away by the vehemence and tenacity of the co-accused Inspector H.P.Singh and has for no valid reason whatsoever changed his earlier decision to accept the report of the Enquiry Officer. In this regard it would be significant to note that while the disciplinary authority gave Inspector H.P.Singh an opportunity to be heard no such opportunity was granted to the applicant before the disagreement with the Enquiry Officer's report was recorded.

11. We also find no merit in the contention of the disciplinary authority, as reiterated by learned counsel for the respondents before us, that the applicant had kept silent after the decision. According to the disciplinary authority from the applicant's silence his complicity in the alleged act of tampering with the entries in the daily diary could be presumed. While expressing this view the disciplinary authority appears to have conveniently omitted to take note of the finding recorded by the Enquiry Officer that the applicant had got his statement recorded under Section 161 CRPC and that therefore no question of any compromise/conspiracy with

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Inspector H.P.Singh would arise. That part, the applicant has annexed with his OA a photocopy of the letter (in Hindi), as at Annexure A-5, addressed by the applicant to the DCP (East) Delhi on 6.3.90 in which a complaint has been made against Inspector H.P.Singh, the then SHO of the concerned police station regarding change in entries in Daily Diary. The applicant's averment relating to the aforesaid letter in para 4 (iii) of the OA has not been specifically denied in the counter filed by the respondents. At any rate, the denial, if any, is an evasive one. In reply to the averment the respondents have taken the plea that the applicant was unable to give any convincing reply as to why he had made the entry DD No. 24-B dated 23.2.90 in the changed Rojnamacha when his earlier entry in the original Rojnamacha of the same No. i.e., 24-B was clearly against the then SHO Inspector H.P.Singh. In this reply not a word has been spoken about the non-receipt of the applicant's letter dated 6.3.90 (A-5).

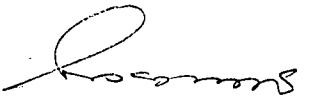
12. In view of what has been held and discussed above, we are convinced that the impugned orders cannot be allowed to stand. We accordingly allow this OA and quash all the impugned orders including the punishment order dated 15.3.95, the appellate order dated 4.6.97, the order of the disciplinary authority dated 28.12.94 disagreeing with the findings of the Enquiry Officer and the order dated 16.12.96 issued by the Deputy Commissioner concerned by which the applicant's name has been brought

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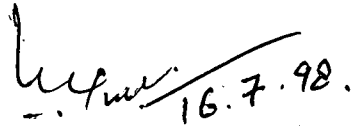
on the secret list of officers of doubtful integrity, the last mentioned order being clearly an off-shoot of the punishment order.

13. In the facts and circumstances of the case no order as to cost is made.



(S.P. BISWAS)
Member (A)

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(T.N. BHAT)
Member (J)