CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1775 Of 1997

New Delhi, this 26th day of May, 2000

HON'BLE SHRI JUSTICE V.RAJAGOPALA REDDY, VC(J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Head Constable Uttam Dass
S/o Shri Kirat Singh
R/o A-100, Gandhi Extension
P.S. Bhajan Pura
Delhi-53. ... Applicant

(By Advocate:Shri Shankar Raju)

versus

1. Union of India, through
Secretary
Ministry of Home Affairs
North Block
New Delhi.

2. Addl. Commissioner of Police
Northern Range, Police Headquarters,
I.P.Estate, M.S.O. Building
New Delhi.

3. Deputy Commissioner of Police
South District
P.S. Hauz Khas
New Delhi. ... Respondents

(By Shri Vijay Pandita,Advocate)

Order (oral)

By Reddy,J.

The applicant who was a Constable in Delhi Police was alleged to have committed rape of a minor girl on the intervening night between 8/9.10.1984. He was arrested and FIR was registered U/S 376/341 IPC. The applicant was placed under suspension with effect from 10.10.1984 pending further departmental action against him. The applicant was however acquitted by the criminal court of the offence of rape, by judgement dated 27.10.1996 by the Additional

Sessions Judge, Delhi in S.C.No.17/85 on the ground that there was no evidence against the accused.

2. A preliminary enquiry was held by the department and report was submitted 'prima facie', holding that the applicant was responsible for the act of rape. As such a regular departmental enquiry was ordered against the applicant. The enquiry officer found him guilty of the charge. Partly agreeing with the findings of the enquiry officer and after hearing the applicant the disciplinary authority imposed the punishment of forfeiture of three years' approved service permanently. It was also ordered that he would not earn increments of pay during the period of reduction and on the expiry of the said period, the reduction would have the effect of postponing his future increments of pay. The suspension period was treated as period not spent on duty, by an order dated 7.2.1995. This order was affirmed by the appellate authority in its order dated 5.8.1996. Aggrieved by the penalty, the applicant filed the present OA.

3. The learned counsel for the applicant submits that the impugned order was wholly perverse and arbitrary as there is no evidence on record and the charge was not proved. It is further contended that the disciplinary authority could not impose punishment on suspicions and surmises.

(9)

4. The learned counsel for the respondents, however, submits that the enquiry officer relying upon the evidence of PW2 has arrived at the conclusion that the charge was proved and hence this Court will not interfere with the findings of the enquiry officer which are based upon evidence. Learned counsel vehemently contends that a person who was guilty of rape, cannot be permitted to continue in police service which will be detrimental to the discipline of the police force.

5. We have given anxious consideration to the pleadings and arguments advanced by the learned counsel on either side.

6. The disciplinary authority in his final order, after considering the conclusions of the enquiry officer and the entire material evidence available in the enquiry, found the following points:

"i) Kumari Manbhari, the prosecutrix and her parents have not been examined in the criminal case as well as in the D.E. The statement of Kumari Manbhari was essential to connect the accused/defaulter with the rape case.

ii) Sh. Prem Chand, Chowkidar who informed the duty officer PS/Najafgarh on the night of 8/9.10.84 with the incident of quarrel and Village Pardhan present at the spot as per statement of Inspr. Jai Pal Singh and SI Ram Kishan had not been examined in the D.E. Not a single person of the locality has been examined too.

iii) The rape is alleged to have been committed on the night 8/9.10.84 but the information got recorded vide DD. 10 dated 10.10.84 is of a quarrel where upon the local police reached and registered the rape case.

(10)

iv) According to Inspr. Jai Pal Singh, the information of rape was given to him by Ct. Ram Lakhan but the latter has not been examined in the D.E.

v) Duration of rape is not given in the medical report. The doctor opined that the sputum sample was not suitable for group determination and that the group of blood and semen could not be determined.

vi) The E.O. has proved the charge on the evidence of Inspr. Jai Pal Singh, SHO/Mehrauli, SI Ram Kishan I.O. of the case and FIR No.235/84 stated to be registered on the statement of Kumari Manbhari, the prosecutrix.

vii) According to Inspr. Jai Pal Singh, he had detailed Const. Ram Lakhan and Uttam Dass on duty for keeping watch on the criminal at chaudhary farm but there is no documentary evidence available on D.E. file about their deployment.

viii) Dr.(Mrs.) K.K.Kalra had examined prosecutrix on 10.10.84 and opined that the rupture of hymen found in this case was recent whereas the rape was alleged to have committed on the night of 8/9.10.84.

ix) According to Inspector Jai Pal Singh, the then SHO/Mehrauli and SI Ram Kishan I.O. of the case the rape was committed twice in the night in the presence of the parents of the prosecutrix. Corroboration of their version by an independent witness is lacking."

7. Considering the above, the disciplinary authority found that the charge against the applicant was not proved beyond doubt as the main witness and the victim could not be traced and examined during trial or during the disciplinary enquiry proceedings. However, curiously he concluded that "circumstances clearly indicate that something had happened. Assessing all relevant aspects of the case, I feel that the charge against the defaulter Const. is partly proved."

8. Learned counsel for the applicant vehemently contends that the disciplinary authority having found that there was no material on record in support of the charge on mere suspicions and surmises, no punishment could be imposed.

9. The learned counsel for the respondents, however, points out that PW2 in his evidence has clearly stated that the minor girl has given statement in the presence of her parents that she was raped twice. The FIR which contains her statement was marked as PW1/A and it was relied upon by the ED. It is true that this FIR PW1/A was marked by PW1. But the victim's statement was neither sought to be relied upon by the department nor the same was supplied to the applicant, to enable him to cross examine the witnesses who had recorded the same. The department sought to prove the case on the report of the then SHO/Mehrauli, PW3's DD Entries dated 8.10.84 and 11.10.1984, copy of the judgement of the Sessions Court and the FIR against the applicant U/S 376/341 IPC. Hence the statement recorded by the concerned investigating officer was not duly marked and sought to be relied upon by the department. Under Rule 16 (iii) of the Delhi Police (Punishment & Appeal) Rules,1980 it was permissible for the enquiry officer to bring on record the earlier statement of any witness whose presence cannot be procured without undue delay. It could be relied upon provided that it has been recorded and attested by a police officer superior in rank to the accused officer

(12)

or by Magistrate. In the instant case, it was not shown that R 16 was complied with. It is necessary in cases where previous statements were to be relied upon, that they should be supplied to the applicant along with the charge-sheet and it should be made part of the evidence, so as to enable the charged officer to be prepared to cross examine the concerned witness with reference to conditions stipulated under R 16 etc. However, the fact remains that the disciplinary authority was himself not prepared to hold that the conclusions of the enquiry officer were not correct. He, therefore, has given a categorical finding that the charge was not proved. Once it is found that the charge was not proved, it is not open to him to impose the penalty on the basis of surmises and suspicions.

10. The order of the appellate authority does not improve the situation. It is true, as contended by the learned counsel for the applicant, that the delinquent should not be left scot free in the case where inhuman and heinous crime was said to have been committed by him. We are one with him. We are indeed saddened by the fact that the cruel act committed on the minor girl is left undetected and the responsible person is left unpunished! But in the face of the findings given in the case, it is not possible for us to sustain the punishment. It would be doing violence to the rule of law. This is a case, where the department is the real culprit, for the negligence in securing evidence.

ii. The learned counsel for the respondents relies upon (i) State of Tamil Nadu Vs. S. Subramanium (1996) 7 SCC 509 (ii) State of Tamil Nadu Vs. K.V. Perumal 1996 (5) SCC 474 and (iii) B.C. Chaturvedi Vs. UOI & Ors 1995 (6) SCC 749 for the proposition that the court or tribunal will not interfere in the findings arrived at by the disciplinary authority in the domestic enquiry as the jurisdiction of the Tribunal is only to see whether the enquiry has been properly held in accordance with the procedure but not to interfere with the decision arrived at by the disciplinary authority, as the Tribunal is not an appellate court. We are aware of the propositions of law and we had kept in mind in coming to the conclusion as we did. But in Bank of India & Anr Vs Degala Suryanarayana [JT 1999 (4) SC 489, the Supreme Court has held as under:

> "Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting resonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same

(14)

has to be sustained. In Union of India V. H.C. Goel 1964 (4) SCR 718 the Constitution Bench has held:-

"the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not." (emphasis supplied).

12. Thus, it is still open for the Tribunal to interfere with an order of the disciplinary authority when there is absolutely no evidence in support of the charge and in cases where the finding is such that no reasonable person would have arrived at that finding.

13. In the circumstances, following the judgement of the Supreme Court in Degala Suryanarayana's case (supra), we hold that the orders of the disciplinary authority as well as the appellate authority are perverse and arbitrary and are liable to be set aside and they are, therefore set aside. The OA is allowed. No order as to costs.

(Mrs. Shanta Shastry)
Member(A)

(V. Rajagopala Reddy)
Vice Chairman(J)

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