CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2241/97

New Delhi, this the 15th day of September, 2000

(12)

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Ex. ASI, Sube Singh No.5067/PCR, Previous No.786/S.B., S/O Sh. Suraj Bhan, Aged about 45 years, previously posted in Delhi Police, R/O Qr.No.D-18, New Police Lines, Kings Way Camp, Delhi.
.....Applicant

(By Advocate: Sh. Shankar Raju)

Versus

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

2. Commissioner of Police, Police Head Quarters, I.P.Esate, M.S.O. Building, New Delhi.

3. Addl. Commissioner of Police, Special Branch, Police Head Quarters, I.P.Estate, M.S.O. Building, New Delhi.
.....Respondents.

(By Advocate: Sh. A.K.Chopra through Sh. R.K.Singh proxy counsel)

O R D E R

Hon'ble Mr. S.A.T.Rizvi, Member (A):

The applicant, Sube Singh, Ex.ASI was dismissed from service on 31.10.95 on the charge of bogus verification of certain passport applications. His lengthy appeal dated 1.12.95 against the dismissal order was also rejected on 26.3.97. Hence, this OA.

2. Briefly stated the facts of the case are the following:

3. The applicant was arrested by the C.B.I. in April,95 for his alleged involvement in the issuance of bogus passports to Gosha Singh and Sukhjinder Singh.

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Following this, the respondents went in for re-verification of some other passport applications which had earlier been verified by him. Out of these, in 10 applications certain deficencies were noticed. In one case, the address of the passport applicant did not exist and in the other nine cases, the passport-applicants were found not residing at the stated addresses. Accordingly, the respondents initiated departmental action against the applicant vide order dated 29.6.95. This was followed by summary of allegations served on the applicant on 13.7.95 and subsequently the charge memo on 3.8.95. As required, an Enquiry Officer (EO) was appointed. The EO's report containing his findings became available on 20.9.95. In the parallel case of bogus verification detected by the CBI, an FIR was lodged on 26.4.95 and the applicant was put under arrest on 27.4.95 and was placed under suspension with effect from the same date, namely, 27.4.95. He was bailed out on 5.5.95. On 17.5.95, he stood transferred from the Spl. Branch to the PCR, thus bringing him technically under the disciplinary control of the Addl.CP/OPS. Thus on account of the criminal case also pending against the applicant, he had made a request for keeping the disciplinary action in abeyance, which was not conceded.

4. We have heard the learned counsel for the parties and have perused the material on record.

5. We have come across several problems with the way in which the respondents have dealt with and handled the departmental action against the applicant. Some of

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the issues that came up for lengthy arguments during the course of hearing of this case relate to:-

i) compliance with the provisions of Rule 15 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980,

ii) sudden inclusion of a fresh charge relating to the past service record of the applicant in the final order passed by the disciplinary authority,

iii) the conclusion of guilt drawn in the enquiry report not being based on a proper and careful analysis of the evidence on record,

iv) the order of the disciplinary authority not being a sufficiently speaking and a reasoned order,

v) the facts regarding the case of Gosha Singh and another, subject matter of CBI enquiry and a corresponding criminal case, finding mention in the order of the disciplinary authority and the appellate authority as well without any mention of this in the summary of allegations or in the charge memo.

6. Yet another somewhat difficult issue to which our attention has been drawn by the learned counsel for the applicant is with regard to the disciplinary

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authority under whose control the applicant was working when he was charged. It has already been stated that the applicant stood transferred to the PCR w.e.f. 17.5.95 and it is nobody's case that he did not move on to the PCR side. In accordance with the existing instructions, therefore, he had, at the time of being charged, already come under the disciplinary control of the Addl.CP/OPS and, on this account, the disciplinary proceedings against the applicant should have been undertaken by this authority and not by the Addl.CP, Spl. Branch. In reply to this, the respondents have argued that since in this case not one but two officials have been proceeded against, one of whom still remained in the Spl. Branch, it was logical to proceed against both of them under one roof, i.e. by letting one and the same person proceed against them both and it did not matter if such a person belonged to the Spl. Branch. One might have been tempted to buy this argument on the ground of administrative convenience, had it not been for the fact that the charges against the two officials were of different natures and, therefore, they could as well have been tried departmentally by separate authorities, one located in the Spl. Branch (in the case of Inspector Bhudhiraja) and the other in the PCR Branch (in the case of Sube Singh, Ex.ASI). Why this arrangement was not contemplated, has not been brought out anywhere nor any light has been thrown on it during the course of the arguments on behalf of the respondents. This is, therefore, another failing noticed by us in this case.

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7. After a careful consideration of the material on record and the arguments advanced on both the sides, we have reached the conclusion that it is not possible to sustain the order passed by the disciplinary authority nor the one passed by the appellate authority in this case for very many reasons. Firstly, we find it not difficult to see that the statements made by the PWs and the DWs, particularly PW Nos.3 & 4 have not been carefully analysed in the enquiry report. The PW-4, in particular, has mentioned that out of 100 verifications done by the applicant, he could find fault only with 10 which are the subject matter of the charge levelled against him. This fact, if properly appraised, could be a factor in favour of the applicant inasmuch as it clearly shows that the applicant is not a totally irresponsible person in this area of work. Further, in his defence, the applicant has mentioned that he was loaded with much of work and, therefore, had to depend some time on the documents supplied to him by the passport-applicants at the Police Station itself. He has alleged that ill-health is also one of the reasons why he could not perform satisfactorily in relation to the passport verification work. By citing the above-mentioned two examples from the kind of evidence available on record, our intention is not to re-appraise the evidence with a view to arriving at a definite conclusion about the guilt or otherwise of the applicant. What we really wish to convey is that the evidence available in this case has not been properly appraised and analysed at the level of the EO. Essentially for the same reason, we also find that the order passed by the

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disciplinary authority cannot be deemed to be a speaking and a reasoned order. The appellate order, based as it is on the orders passed by the disciplinary authority, suffers from the same defect, more or less. We feel, however, that these defects are rectifiable. While we have pointed out the glaring fact that the evidence on record has not been properly appraised by the EO and subsequently, the disciplinary authority and the appellate authority both have passed orders which do not amount to speaking and reasoned orders, we must also admit that the applicant himself has, in his defence statement, no where categorically denied the specific charge levelled against him in respect of the 10 passport-applicants in question. He has, as a matter of fact, pleaded a few grounds such as regarding ill-health, excessive work load, etc. in his defence and has asked for mercy. This situation has rightly turned against the applicant's interest but the view ultimately taken in regard to the severity of the offence committed by him can be debated ~~with~~ and we have offered our comments on this aspect.

8. The learned counsel for the applicant has cited the decisions of the Principal Bench of this Tribunal in Ex. Constable Mawa Singh Vs. Union of India & Ors. (OA-1323/99), decided on 4.8.2000 to bring home the point made by him about the past record having been taken into account at the stage of passing of the final order in the disciplinary proceedings without a specific charge to that effect having first been framed. In this context, we cannot do better than reproduce the relevant

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extracts taken from the order of this Tribunal in Ex. Const. Vinod Kumar Vs. Union of India & Anr. (OA-1260/95), decided on 11.8.99 and the judgement of the Hon'ble High Court in Delhi Administration & Anr. Vs. Ex. Const. Yasin Khan (CWP-4225/99) decided in April, 2000 as follows:-

"OA-1260/95

After hearing the learned counsel for the parties and perusing the record, we are of the view that if the provisions of Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules were followed, the applicant could demonstrate the circumstances under which his record was shown to be bad in the past and could have appealed to the wisdom of the disciplinary authority for inflicting any serious punishment on him. The non-compliance with the said provision could not be said to be a mere irregularity and, therefore, we are of the view that for that reason the impugned order of punishment by the disciplinary authority and the appellate order deserve to be quashed.

CWP-4225/999

We are in agreement with the Tribunal inasmuch as Rule 16 (11) of the Rules makes it obligatory for the disciplinary authority to specifically include the previous bas record in the Memo of Charges as a definite charge wishes to rely upon it for the purpose of imposing penalty. In the present case the absence of specific charge to the effect that the respondent has previously also been absenting himself without leave, could not have been relied upon by the disciplinary authority while awarding punishment of dismissal from service. It is difficult to say as to what extent the previous conduct of the respondent influenced the mind of the disciplinary authority and, therefore, the awarding of penalty, based on previous conduct, has rightly been disallowed by the Tribunal."

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Needless to say that the proceedings in this case evidently and obviously suffer from the defect in question as pointed out by the learned counsel for the applicant.

9. The learned counsel for the applicant has also cited the order of this Tribunal in Ex. S.I. Sohan Lal Vs. Union of India & Ors. (OA-2526/96), decided on 31.5.2000 to support his contention that, all said and done, the punishment meted out to the applicant is grossly excessive. We would, in relation to the present case, like to reproduce the following extracts taken from the aforesaid order of this Tribunal:-

> "12. In B.C.Chaturvedi Vs. Union of India, JT 1995 (8) SC 65 the Hon'ble Supreme Court has held that the High Court/ Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on the penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriate to mould the relief either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or, to shorten the litigation, it may itself in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof."

The applicant had a record of 21 years of service at the time action was initiated against him. During this period, he rose from the post of Constable to that of a Head Constable and thereafter to the rank of Asstt. S.I. in 1989. The applicant has a good service record with about 30 commendation certificates to his credit. This

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contention has not been seriously disputed by the respondents.

10. In the circumstances and having regard to some of the failings highlighted in the preceding paragraphs, we are inclined to conclude that the applicant perhaps did not deserve the extreme penalty of dismissal. We do not feel inclined, however, to substitute one set of punishment for the other as this matter is best taken care of by the disciplinary /appellate authorities. Citing the provisions of Rule 15 (2) of the Delhi Police (P & A) Rules, 1980, the learned counsel for the applicant has correctly pointed out that in a case, like the present one, i.e., in which the preliminary enquiry had revealed commission of a cognizable offence, the disciplinary authority should have taken a conscious decision on whether to proceed against the applicant departmentally or else through criminal action. We find ourselves in agreement with the learned counsel for the applicant on this issue but would like to point out that a failure on the part of the disciplinary authority to exercise his mind on this question need not, by itself, prove fatal to the outcome of the departmental proceedings and this is indeed so in the present case.

11. The simultaneity of the criminal and the disciplinary proceedings has also been referred to and it has been mentioned that the applicant had drawn the attention of the respondents towards this situation and had requested for the deferment of the disciplinary

action in view of the pending criminal case. After consideration of the strict legal position, we do not find ourselves in agreement with the learned counsel for the applicant on this issue. The reason is that there is no bar as such on both the proceedings going ahead at the same time and, secondly, the simultaneity of the proceedings tends to cut both ways. The disciplinary proceedings are likely to affect the criminal case and vice-versa in that the facts and circumstances revealed through evidence etc. in one can certainly affect the course of justice in the other. However, the position would be different if the charges forming part of the two sets of proceedings are not identical. This is so in the present case. The criminal case pending against the applicant confines itself to the irregularities committed while verifying the passport applications of Gosha Singh and Sukhjinder Singh, and has little to do with the specific charge levelled in the departmental proceedings which limits itself to the irregularities committed during the verification of 10 passport applications other than the passport applications relating to Gosha Singh and Sukhjinder Singh. In this aspect of the matter, we are unable to concede the point that the outcome of the disciplinary proceedings has been pre-judicially affected in any manner. Our attention was drawn to the details of the final order passed by the disciplinary authority in another respect. In that order, without giving any reason, it has been stated that "malafide on his part is involved". We do agree with the learned counsel for the applicant that from a perusal of the aforesaid final

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order, we do not find any reasoning or analysis of evidence to suggest or indicate the establishment of the charge of malafide. Thus, this is yet another weakness, the final order suffers from.

12. In the facts and circumstances of the present case as discussed in the preceding paragraphs and having special regard to the orders of this Tribunal quoted in paras 8 & 9, we are inclined to quash and set aside the orders passed by the disciplinary authority as well as the appellate authority with a direction to the respondents to review the situation in the light of what has been observed by us and, if found necessary, to continue the disciplinary proceedings affording reasonable and full opportunity to the applicant to defend himself effectively and to pass, at the end of the renewed proceedings, a detailed, speaking and reasoned order. The E.O., if he is required to re-do the report after necessary opportunity has been given to the applicant must come out with proper analysis of evidence and reasoning in respect of each charge. The respondents are at liberty to frame a specific charge in respect of the past record of the applicant, if they so want subject to the grant of reasonable opportunity to the applicant to state his case. The respondents are further directed to follow the prescribed rules and regulations in re-starting the proceedings in the manner indicated by us and to take a final decision with a period of three months from the date of receipt of a copy of this order. The period from the date of dismissal to the date of re-instatement of the applicant and his status during the

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period following his reinstatement would be determined by the respondents in accordance with the rules and instructions on the subject.

13. In the result, the OA succeeds and is allowed with the directions given in para 12. There shall be no order as to costs.

(S.A.T.Rizvi)
Member (A)

(Kuldip Singh)
Member (J)

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