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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2281/97
New Delhi this the 29th day of August, 2000

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC (J)
HON'BLE MR. GOVINDAN, S. TAMPI, MEMBER (A)

Jagbir Singh
S/o Shri Kartar Singh,
R/o H.No. 329, Vill. & P.O. Siruspur,
Delhi.

...Applicant

(By Advocate: Shri O.P. Gehlout)

Versus

1. The Commissioner of Police,
Delhi Police Headquarters,
I.P. Estate, New Delhi.
2. The Additional C.P./(AP&T)-Delhi,
Police Headquarters, M.S.O. Building,
I.P. Estate, New Delhi.
3. The Deputy Commissioner of Police,
VI Bn. DAP, Delhi.

...Respondents

(By Advocate: Shri Harvir Singh)

ORDER (Oral)

By Mr. Justice V. Rajagopala Reddy, VC(J)

Heard the counsel for the applicant and the respondents.

2. While the applicant was working as a Constable in Delhi Police, he was served with the Memorandum of Charges dated 16.3.95, in which it was alleged that he and other police staff had raided and apprehended certain persons selling smack at Karol Bagh on 4.4.90, an FIR No. 81/90 under the N.D.P.S. Act was registered against the accused persons but later on during the trial, the applicant did not support the case of the prosecution. As the applicant denied the allegation an enquiry was conducted into the allegations and the Enquiry officer found him

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✓ guilty of the charge. The Disciplinary Authority agreeing with the findings of the Enquiry officer imposed the penalty of with-holding of one service increment temporarily for a period of one year in the impugned order dated 9.10.95. This order has been confirmed by the Appellate Authority as well as the Revisional Authority. The present OA is filed aggrieved by the above orders of punishment.

✓ 3. Learned counsel for the applicant has advanced the arguments as to the validity of the Enquiry officer's findings and the impugned order passed on the basis of the said findings. He also raised the contention that the applicant has been adversely discriminated, in that he alone was proceeded against in the departmental enquiry leaving alone the other police staff who were also alleged to have not supported the case of the prosecution. Learned counsel, therefore, contends that the impugned order is vitiated and is liable to be quashed.

✓ 4. Learned counsel for respondents refuted the contentions and contends that there is no basis for the contention as to the discrimination.

5. We have given careful consideration to the contention advanced by counsel on either side. Learned counsel for the applicant has taken us through the evidence of the witnesses and the Enquiry Officer's report and his findings as also the disciplinary authority's order. All the contentions relate to the appreciation of the evidence by the Enquiry Officer. As we are not an Appellate

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Authority, it may not be possible for us to go into the veracity of the witnesses or the correctness of the findings of the Enquiry Officer which have been arrived at on the basis of the evidence.

6. The contention with regard to the discrimination, however, appears to be of some force. Upon the raid made by the applicant and the other police staff, certain packets of smack have been recovered from the accused persons. A Criminal trial ensued in S.C. No. 354/93 against the accused and in the judgment dated 17.12.94 the Additional Session Judge, Delhi while acquitting the accused, at para-9 of the judgment has observed as follows:-

"It may be noted that even police officials did not support the prosecution whole heartedly and had to be cross-examined by Shri Mahabir Prashad, Ld. Addl. PP. These police officials were HC Jagbir Singh PW-2-A member of the raiding party, Inspector Ajit Singh, SHO PW-3 posted as SHO in the Police Station at the relevant time and Ct. Ramesh Kumar, PW-6- another member of the raiding party".

7. On the basis of this judgment and the observations made by learned Judge, the departmental enquiry has been initiated against the applicant. The allegation of the applicant is that though a categorical finding was given by the learned Judge against police staff including Inspector Ajit Singh, SHO PW-3 in the case and Ct. Ramesh Kumar PW-6 who are members of the impleading party, no action has been taken against them only the applicant has been signled out. Though a specific allegation has been taken by the applicant in the OA as regards the hostile discrimination, in the counter filed by the

respondents, no where it is stated except denying the allegations in Para 5.7 & 5.8, that others also have been charge-sheeted. No reason also is assigned why the applicant has been singled out leaving out the others. This is not a case where the roll of the applicant is different from other officers. The Ld. Judge found that all the police officers have not supported the case of the prosecution. At least in this case the applicant in his cross examination had stated that one packet was recovered from the accused though he has not stated so in the Chief examination. Learned counsel for respondents also submits that there is no information whether the other persons have been charge-sheeted or not. In the absence of the required averments made in the reply, we are left with the conclusion that other persons of the raiding party were not charge-sheeted.

8. Learned counsel for the applicant placed reliance upon Sangara Singh & Others Vs. State of Punjab & Others (1983) 4 SCC 225. In that case several police officials have been dismissed from service for misconduct of participation in unlawful agitation but subsequently majority of them, except the petitioners therein have been reinstated and criminal prosecution against them was withdrawn on the basis of certain recommendations of a committee comprising senior officers. But the petitioners, after enquiry were dismissed from service. The Hon'ble Court found that the arbitrary picking and choosing for reinstatement was violative of Article 14 of the Constitution and accordingly set aside the order of dismissal of the petitioners therein. In our view, the ratio of the

judgment squarely applies to the facts in the present case. In the absence of the criteria adopted by the respondents in proceeding only against the applicant when more than one had been held to have not supported the case of the prosecution, it has to be held that the applicant has been discriminated in hostile manner violating the Fundamental right under Article 14 & 16 of the Constitution.

9. In view of the above discussion, the OA is allowed. The impugned orders of the Disciplinary Authority, the Appellate Authority and the Revisional Authority are quashed.

10. It is stated by the learned counsel for the applicant that in view of the punishment order passed against the applicant he was not considered for promotion on his turn and his juniors have been considered and promoted. We, therefore, direct the respondents to consider the case of the applicant from the date on which his juniors have been considered and promoted if found eligible otherwise. No costs.

(Govindan S. Tampi)
Member (A)

cc.

(V. Rajagopala Reddy)
Vice-Chairman (J)