

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.279/1997

New Delhi, this 16th day of August, 2000

Hon'ble Justice Shri V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A) (9)

Constable Bir Singh No.1931/PCR
V-96, Arvind Mohalla
Gujjarwali Gali, Delhi-53 .. Applicant

(By Shri Shankar Raju, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Commissioner of Police
Police Hqrs., New Delhi
3. Addl. Commissioner of Police
Rashtrapati Bhavan, New Delhi
4. Dy. Commissioner of Police
Rashtrapati Bhavan
New Delhi .. Respondents

(By Shri Anil Singhal, proxy for Ms.Jasmine Ahmed)

ORDER(oral)

By Justice Shri V.Rajagopala Reddy

Heard the learned counsel for the applicant and the respondents. The applicant is working as Constable in Delhi Police. A charge-memo has been issued to him alleging that he was arrested on 12.10.92 for an offence under Sections 380/448/506/323 IPC under FIR No.504/92 at Police Station, Bhajanpura but he had suppressed his involvement in the above case and failed to intimate to the superior authority about his arrest. He denied the charge. Thereupon an enquiry has been held and the Enquiry Officer after examining several witnesses found the applicant guilty of the charge. Agreeing with the findings of the EO, the disciplinary authority (DA, for short) imposed the penalty of permanent forfeiture of

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one year approved service reducing his pay from Rs.1130 to Rs.1110. In the appeal, the appellate authority (AA, for short) taking a lenient view of the misconduct of the applicant, modified the punishment to temporary forfeiture of one increment from Rs.1130 to Rs.1110 for a period of one year. Revision filed by the applicant was rejected by order dated 24.5.96. The OA is brought against the above penalty imposed by the AA.

2. Learned counsel for the applicant submits that the applicant was not guilty of the charge as he had immediately asked the Investigating Officer ASI Virender Singh, PW-1, to inform of his arrest to his office.

3. Learned counsel for the respondents however submits that it is the duty of the applicant to intimate about his arrest to the official superior which he failed to do. It is also contended that the DA and AA had considered the evidence on record before imposing the penalty and the findings arrived at cannot be interfered with by the Tribunal as it is not an appellate authority.

4. We have carefully considered the contentions raised in this case. The arrest of the applicant on 12.10.92 is not disputed. PW-1 ASI Virender Singh, the Investigating Officer who registered the case against the applicant stated during the enquiry that SHO, Bhajanpura was accordingly informed by him and this information was sent to Rashtrapati Bhavan security. Right from the beginning it is the case of the applicant that he had asked the Investigating Officer to inform about his arrest in time to his superior. The EO after

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examining all the witnesses had concluded that once the applicant intimated the investigating officer, it was the duty of the investigating officer to inform the unit regarding the arrest of the applicant in time. Having given the said finding, the EO, however, concluded that the charge was proved. From a reading of the EO's finding, the conclusion that the applicant was guilty of suppressing the fact of his arrest would not follow.

5. As per Government instructions given under Rule 3(B) of CCS(Conduct) rules, it was the duty of the government servant who may be arrested for any reason to intimate the fact of his arrest and the circumstances connected therewith to his official superior promptly even though he might have subsequently been released on bail. Failure on the part of any government servant to so inform his official superior will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone. Thus it was no doubt the duty of the applicant to intimate about his arrest to the superior officer but the fact remains that when the applicant was arrested, it would not have been possible for him to intimate to his official superior promptly as he would be in the custody of the police. The gravamen of the charge being suppression of the fact of arrest, what has to be seen is whether the applicant was guilty of suppression of the fact of his arrest. In this case as stated supra and found by the EO, the applicant has made an honest attempt by asking the investigating officer to intimate about his arrest to the concerned officer. If the investigating officer had failed to do so, it cannot be said that the applicant had suppressed any material



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information rendering him for disciplinary action. Mental attitude of the CO is an important factor in the cases of this type, the enquiry being quasi-judicial in nature. It is the case of the applicant that immediately after he was released on bail on 15.10.92, he had also informed about the fact and the circumstances to the duty officer. In order to satisfy ourselves whether the applicant had done so, we had directed the department to produce the file containing the DD entry of 15.10.92. It is now stated that the said file has been destroyed due to lapse of time.

6. In the circumstances, taking into consideration the finding of the EO which has been agreed to by the DA, it cannot be said that the applicant is guilty of suppression of the fact of his arrest, promptly.

7. In the result, we set aside the impugned orders. The OA is accordingly allowed. No costs.

Shanta S-

(Smt. Shanta Shastry)
Member(A)

Om Rajagopala Reddy

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

/gtv/