

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA No. 2964/97

New Delhi, this the 17th day of December, 1998

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

In the matter of:

Ramdhari Singh s/o Sh. Parshadi Singh,
R/o A-33, Police Station,
Paharganj,
New Delhi.

...Applicant

(By Advocate: Sh. Sarvesh Bisaria)

Vs.

1. Additional Commissioner of Police,
Southern Range,
Delhi.
2. Addl. Deputy Commissioner of Police,
West Distt.,
New Delhi.
3. Commissioner of Police,
I.P.Estate,
New Delhi. Respondents

(By Advocate: Shri Deepak Bhardwaj proxy for
Shri Arun Bhardwaj)

O R D E R

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

By the order dated 10.07.1996 passed by respondent no. 2 herein the applicant has been awarded the punishment of reduction of pay from Rs. 1330 to Rs. 1270 for a period of two years with cumulative effect and the period of absence from 08.08.1995 to 10.07.1996 has been treated to be not spent on duty. Further the name of the applicant has been directed to be placed in the list of persons whose integrity is doubtful for a period of 5 years. The aforesaid order has been passed after a regular disciplinary enquiry was held.

Shri T.N.Bhat
17.12.98.

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2. The applicant who was at the relevant time working as Head Constable, preferred an appeal which too has been rejected by the Additional Commissioner of Police, Sourthern Range by the order dated 22.9.1997.

3. Briefly stated, the allegations against the applicant, as contained in the Memo of Charge were as follows:

That the applicant alongwith two Constables, namely, Sudershan and Hari Ram stopped the scooter of one Shri S.S. Bakshi in front of Jagir Palace, Ring Road while he was coming to his house and his scooter was taken away to the police station while the said Sh. S.S.Bakshi was made to sit in a three wheeler with a lady who was accompanying the police personnel. The said Sh. S.S. Bakshi was then falsely accused by the applicant and his companion constable of committing an immoral act with that lady. He was, however, later released after being compelled to part with Rs. 2320/-.

4. The applicant assails the impugned order as also the findings of the Enquiry Officer mainly on the ground that this was a case of no evidence, as the star witness, namely, Sh. S.S.Bakshi never appeared during the course of the enquiry to depose as a witness and that the remaining witnesses examined by the enquiry officer had no personal knowledge about the alleged incident. It is further averred by the applicant that no show cause notice



was given to him before the imposition of the punishment. Yet another contention raised is that on the same evidence the other two co-accused were exonerated and, therefore, on the same evidence the applicant could not have been held guilty of misconduct.

5. The respondents have resisted the claim of the applicant and have in their detailed counter averred that there was sufficient evidence connecting the applicant with the commission of the alleged misconduct and that, therefore, the punishment was rightly awarded to him. It is also averred that the requisite show cause notice was given to the applicant and his reply thereto was also considered before imposition of the punishment.

6. The applicant has also filed his rejoinder to the counter filed by the respondents in which the contentions made in the OA have been reiterated.

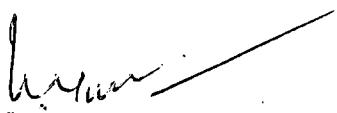
7. We have heard the learned counsel for the parties for final disposal of the OA at the admission stage itself and have also persused the relevant record furnished by the learned counsel for the respondents.

8. It is not denied that Shri S.S.Bakshi, the complainant in the case did not at all appear before the Enquiry Officer during the departmental enquiry, though he was summoned several times by the Enquiry Officer. We notice that the Enquiry Officer has relied upon some statement made by the complainant on 29.1.1996 which statement was later forwarded by the Deputy Commissioner, namely, Shri M.K.Bakshi, to the Enquiry Officer. The

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incident relates to 12.12.1995 while the statement of the complainant purports to have been made before the Deputy Commissioner on 29.1.1996. In his forwarding letter the Deputy Commissioner has suggested to the Enquiry Officer to fix a time for meeting the complainant at the residence of the Deputy Commissioner 'in the interest of confidentiality of the enquiry'. The Enquiry Officer on his part seems to have obliged the Deputy Commissioner by placing implicit reliance upon the said statement of the complainant without bothering to get the complainant cross-examined by the delinquent official, 'namely, the applicant. We notice that apart from the lady who was allegedly a part and parcel of the conspiracy, the only other witness who had any personal knowledge about the alleged incident was the complainant. Neither the lady nor the complainant have appeared before the Enquiry Officer. The depositions of the other witnesses who were examined by the Enquiry Officer are only formal in nature. None of those witnesses is an eye witness.

9. The Enquiry Officer as well as the disciplinary authority clearly appear to have based their findings on the so-called deposition of the complainant made at the back of the applicant. Such a deposition could not have been made use of in the disciplinary enquiry against the applicant. There is no evidence connecting the applicant to the commission of the alleged misconduct. PW2, namely, Sh. B.D. Sharma, ACP states in his deposition that the complainant had met him on 18.12.1995 and related the alleged incident to the witness. This witness is admittedly the brother-in-law of



the complainant and states that the amount of Rs. 2320/- was returned to the complainant in his presence by the applicant. The witness admittedly has no personal knowledge about the alleged occurrence. Similarly, Shri Satish Sharma, Additional SHO also has no personal knowledge and repeats what has been stated by Shri B.D.Sharma. PW4 Constable Hatu Ram admits in his deposition that the applicant was on some special duty from 8:10 pm to 11.00 pm and that neither the applicant nor his co-accused were present at or near the place where the alleged incident took place, viz., Jagir Palance. Shri L.N. Rao, PW5, had conducted the preliminary enquiry and he states that according to the preliminary enquiry the alleged misconduct was established against all the delinquent officials including the two constables.

10. That leads us to the findings recorded by the Enquiry Officer. It is admitted by the Enquiry Officer in the report that from the evidence recorded in the disciplinary enquiry the alleged misconduct was not established against two constable, namely, Sudershan and Hari Ram. It is, therefore, not understood as to how could the alleged misconduct be found established against the applicant if on the same evidence the misconduct was not found established against the above mentioned two constables.

11. We are convinced that there was no evidence at all against the applicant on the basis of which he could be held guilty of misconduct. As a matter of fact the enquiry officer himself appears to have been hesitant in recording a conclusive finding against the

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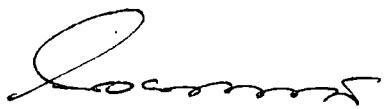
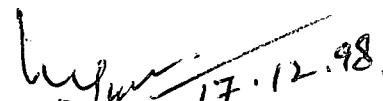
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applicant and that is why at the end of his report he has stated that the applicant cannot "escape fully from his involvement". The disciplinary authority also on its part, while awarding punishment, seems to have taken a lenient view and awarded only the punishment of reduction in pay for two years. We are convinced that had the disciplinary authority really believed the version of the prosecution that the applicant extorted money from the complainant, the disciplinary authority would have awarded the extreme punishment of dismissal from service.

12. We have carefully gone through the departmental record and have not been able to find any evidence of the fact that before imposing the punishment the applicant had been given an opportunity to show cause why he should not be punished.

13. In view of the above we find much merit in this OA. We accordingly allow the OA, quash the impugned order of punishment and direct the respondents to restore the applicant to the position which prevailed before the initiation of the proceedings against him. This shall be done within two months from the date of receipt of a copy of this order.

14. The OA is disposed of in terms of the above order, leaving the parties to bear their own costs.


(S.P. Biswas)
Member (A)
(T.N. Bhat)
Member (J)