

Central Administrative Tribunal
Principal Bench

O.A. No. 510 of 1997

New Delhi, dated this 20 September, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

Maha Singh (2584/D),
Ex-Assistant Sub-Inspector,
S/o late Shri Amar Nath,
R/o Mohalla Bhatiaya Gate,
Ward No. 11,
Village Jhajhar, P.O. Jhajhar,
District Rohtak,
Haryana.

.. Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Commissioner of Police, Delhi,
Police Headquarters,
I.P. Estate, New Delhi.

2. Sr. Addl. Commissioner of Police (P&I),
Police Headquarter,
I.P. Estate,
New Delhi.

3. Dy. Commissioner of Police/FRRO,
Hans Bhawan,
Bahadur Shah Zafar Marg,
New Delhi.

.. Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER

MR. S.R. ADIGE, VC (A)

Applicant impugns the enquiry report (Annexure G); the disciplinary authority's order dated 12.2.96 (Annexure A) and the appellate authority's order dated 14.6.96 (Annexure B). He seeks reinstatement with all consequential benefits.

2. Applicant was proceeded against departmentally on the charge (Annexure F) that ~~apprehended~~ while posted as Immigration Officer, Indira

~

(49)

Gandhi International Airport, New Delhi forcibly removed 16 notes each of 500 Riyals i.e. 8000 Riyals from a passenger one Mr. Naseem Ahmed who had disembarked at IGI Airport, New Delhi on 5.1.95 at about 5.00 a.m. by Flight No. RJ 192.

3. Applicant was placed under suspension vide order dated 20.1.95 (Annexure C).

4. The I.O. in his findings (Annexure G) held the charge as substantiated. A copy of the findings was furnished to applicant for representation, if any. Applicant submitted his representation denying the findings. After perusing the materials on record, and giving applicant an oral hearing on 1. 2.96, the disciplinary authority agreed with the findings of the E.O., and in his detailed impugned order dated 12.2.96, which discussed each of pleas taken by applicant rejected those pleas and dismissed applicant from service, further directing that the suspension period from 20.1.95 onwards be treated as period not spent on duty.

5. Applicant's appeal was rejected by impugned order dated 14.6.96 giving rise to the present O.A.

6. We have heard applicant's counsel Shri Shyam Babu and respondents' counsel Shri Rajinder Pandita.

7. The first ground taken is that Respondents have not formed any opinion of complete unfitness of applicant to be retained in police service as is required under Rule 8 (a) Delhi Police (Punishment & Appeal) Rules. Reliance in this connection has been placed on the Hon'ble Supreme Court's ruling in Dalip Singh's case¹ it is now well settled by a recent Full Bench order of the Tribunal, which has discussed all the relevant rulings of the Hon'ble Supreme Court on the subject, ~~including~~ the one in Dalip Singh's case (supra) that it will be sufficient for the purposes of Rule 8(a), if a perusal of the disciplinary authority's order reveals that upon application of mind he has come to the conclusion that the defaulter is completely unfit to be retained in police service, even if he does not use the very words in his order that the defaulter is completely unfit to be retained in police service. In the present case a perusal of the concluding paragraph of the disciplinary authority's impugned order dated 12.2.96 reveals that after due application of mind he has concluded that applicant is completely unfit to be retained in police service. Hence this argument fails.

8. The next ground taken is that a copy of the P.E. report submitted by Shri D.P. Pandey,

(51)

Commissioner of Police was not supplied to applicant as a result of which he was denied the right of cross-examination and to build his defence in the D.E., We find that applicant did cross-examine the PWs and hence he cannot say that he was denied the right of cross-examination. Respondents have stated in their reply that Shri Pandey was not cited as a PW in the D.E., which applicant has not rebutted in rejoinder. Applicant has not asserted that the aforesaid P.E. report was relied upon in the D.E. and under the circumstances he has not been able to establish that its non-supply prejudiced him in his defence in the D.E. This ground, therefore, also fails.

9. The next ground taken is that there has been a violation of Rule 15 (2) Delhi Police (Punishment & Appeal) Rules in as much as although a cognizable offence was made out, prior approval of Additional Commissioner of Police whether to initiate criminal proceedings or departmental action was not taken. Respondents deny this contention and state that approval of competent authority under Rule 15(2) to initiate a D.E. was obtained vide Memo dated 28.4.95. This has not been denied by applicant in rejoinder and hence this ground also fails.

10. Grounds (d), (e) (f) and (g) relate to reappreciation of evidence which is beyond the scope and ambit of the Tribunal in the exercise of its writ

2

jurisdiction.

52

11. The next ground taken is that the E.O's findings are perverse and arbitrary. This assertion has been denied by respondents in their corresponding para of their reply, wherein it has been stressed that the PWs have supported case of the prosecution. This has not been denied by applicant in rejoinder. Hence this ground also fails.

12. It has next been contended that the conclusion of the disciplinary authority are arbitrary and unjustified. A perusal of the disciplinary authority's impugned order dated 12.2.96 reveals that it is a detailed and reasoned one in which he has discussed the E.O's findings as well as each of the grounds taken by applicant in his written representation against those findings, in considerable detail. Hence it cannot be said that the disciplinary authority's conclusions are arbitrary or unjustified. This ground, therefore, also fails.

13. It has next been contended that the appellate authority's order is a non-speaking one. The appellate authority has recorded that he gave applicant a hearing in the OR wherein he had nothing more to add than what he had already stated in his written appeal other than to reiterate his stand

2

(53)

that he was innocent and had been falsely implicated. A perusal of applicant's appeal (copy on record) reveals that the pleas contained therein had already been taken by him before the disciplinary authority and had been considered by the disciplinary authority in his impugned order dated 12.2.96. Under the circumstances if upon a perusal of the materials on record, and after giving applicant a hearing in the O.R., the appellate authority agreed with the disciplinary authority for the reasons contained in the disciplinary authority's order and rejected the appeal without considering it necessary to repeat and discuss all those pleas again, it cannot be said that the appellate authority's order is a non-speaking one.

14. Lastly applicant has contended that there was no identification of money alleged to have been extorted by applicant; there was no recovery of extorted money; there was no seizure memo; and no complaint was made regarding the alleged extortion by PW-11 Smt. Prem Soni or PW-14 Shri K.S. Gokak, Additional FRRO or DW-1 Shri S.R. Shukla.

15. It is well settled that unlike in a criminal case where the standard of proof required to ensure conviction is much more rigorous and the accused must be held to have committed the offence beyond all reasonable doubt for conviction to be

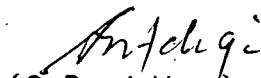


sustained, in a departmental proceeding it is sufficient if the preponderance of probability points to the guilt of the defaulter. In the present case, from the materials on record, including the evidence of the PWs which has not been effectively shaken in cross-examination, respondents cannot be said to have acted illegally or arbitrarily in holding applicant guilty as charged.

16. The O.A. is, therefore, dismissed. No costs.


(Kuldip Singh)
Member (J)

'gk'


(S.R. Adige)
Vice Chairman (A)