

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 854/97

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New Delhi this the 27th day of June 2000

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Radhey Shyam, ASI
No. 3149/D, Delhi Police
I.G.I. Airport, New Delhi.

..Applicant

(By Advocate: Ms. Shilpa Chohan proxy
for Shri Naresh Kaushik)

Versus

1. The Commissioner of Police
Delhi, P.H.Q., I.P. Estate
New Delhi.
2. The Addl. Comissioner of Police
Southern Range, PH.Q.
New Delhi.
3. DCP, South West Distt.
New Delhi.

..Respondents

(By Advocate: Shri Anil Singhal)

ORDER (Oral)

By Mr. Justice Ashok Agarwal

A penalty of forfeiture of 5 years approved service permanently for a period of 5 years entailing proprotionate reduction in the pay imposed on the applicant in disciplinary proceedings conducted against him is impugned in the present OA.

2. Disciplinary proceedings were initiated against the applicant vide order dated 25.10.94 on the allegation that on 23.9.94 the applicant, Assistant Sub Inspector of Police attached to Police Station Vasant Kunj went to the house of Sh. Rame Bhai, s/o Shri Attar Singh at 0-48-M Bapu Park, South Extension I, New Delhi and told him that a case of theft has been registered against him in

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which two of his servants have been arrested and he (ASI) is going to arrest him and his sons. The ASI further told if he (Rame Bhai) is ready to pay Rs.10,000/- as illegal gratification, he can save them from arrest. Sh. Rame Bhai agreed to pay Rs.10,000/- to the ASI under threat as illegal gratification. The payment was scheduled for 24.9.94 at 1.00 p.m. in chamber No.211 of Patiala House Courts, New Delhi. In the meantime, the complainant Sh. Rame Bhai helplessly knocked the door of Anti Corruption Branch of Delhi and filed a complaint whereupon a raiding party headed by Inspector S.K. Banta by associating Sh. Rajinder Kumar Sharma, Land and Building Department, ITO New Delhi as punch witness was organised by the Anti Corruption Branch. The raiding party waited till 2.30 p.m. The complainant informed that ASI Radhey Shyam came there before 12.00 p.m. and has fixed the shop of Sh. Dharam Singh in village Masood Pur as the place for accepting the said amount. The raiding party reached the spot at 3.45 p.m. where ASI Radhey Shyam was already present. The ASI demanded the bribe money from the complainant but Sh. Dharam Singh got suspicion due to the presence of one more person near his room and prevented the ASI from accepting the illegal gratification.

3. The disciplinary enquiry was entrusted to Sh. Prabhati Lal, ACP Naraina and four prosecution witnesses viz. (i) Rajinder Kumar Sharma, (ii) Inspector S.K. Banta, Anti Corruption Branch, (iii) ACP S.P. Singh, Vigilance Branch, Police Headquarters and (iv) Rame Bhai and one court

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witness viz. SI Chiranjit Lal were examined in the presence of the applicant and his defence counsel Sh. Nand Lal Dua. Adequate opportunity for cross-examining the witnesses was offered. All witnesses, except one, were duly cross-examined. Applicant has thereafter adduced evidence as many as seven defence witnesses. On an appraisal of the entire evidence both oral as also documentary the enquiry officer by his report dated 7.9.99 has found that the aforesaid charge has been duly brought out against the applicant. Aforesaid finding of the enquiry officer was duly served by the disciplinary authority on the applicant in order to enable him to make a representation against the same. Applicant has submitted his representation. Though called upon for a personal hearing in the orderly room on two occasions, Applicant did not avail of the opportunity by remaining present. The disciplinary authority by the impugned order dated 29.3.96 has concurred with the finding of the enquiry officer by observing as follows:

"I hold ASI Radhey Shyam, No.3149/D guilty of charge of corruption levelled against him. Though the money was not actually received by the defaulter, there is adequate evidence to substantiate his intention to do so. As such, I award him a punishment of permanent forfeiture of five years' approved service entailing reduction in his pay from Rs.1530/- per month. He will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing of his future increments of pay."

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4. Aforesaid order of the disciplinary authority was carried by the applicant in appeal and the Appellate Authority by his order dated 19.12.96

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has affirmed a finding of guilt arrived at both by the Enquiry officer as also the Disciplinary Authority. He has, however, modified the order of penalty as under:

"Therefore, I modify the punishment from forfeiture of 5 years approved service to that of forfeiture of 5 year's approved service permanently for a period of 5 years entailing proportionate reduction in his pay."

5. Aforesaid orders are impugned by the applicant in the present OA.

6. We have heard Miss Shilpa Chauhan in support of the OA. She ~~had~~ applied for adjournment on the ground that the counsel of the applicant is not present. Since the present OA has been pending for over three years the prayer ^{was} ~~is~~ rejected. We have, therefore, proceeded to hear Ms. Shilpa Chauhan on merits of the OA. She has submitted that the evidence adduced by the enquiry officer is discrepant and is not worthy of credence. She has sought to point out certain contradictions in the ^{evidence of} prosecution witnesses and has urged that no reliance can be placed on the evidence which has been relied against the applicant. She has, therefore, made a prayer that the present OA may be allowed and the impugned order of penalty may be quashed.

7. We have further heard Mr. Shankar Raju, ^{also} ^{Miss Chauhan}, who has assisted in advancing the submissions.

8. It is ~~next~~ contended that the enquiry officer in the instant case has cross-examined the defence witnesses. He has thus, assumed the role

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both of a prosecutor as also that of a Judge, and, this has therefore, occasioned a serious breach of the principles of natural justice. The entire proceeding is, therefore, required to be over-ruled. The applicant, in the circumstances is entitled to be absolved.

9. We have carefully considered the aforesaid contentions by perusing the rules of ~~procedure prescribed for the enquiry~~ ~~witness in the instant case~~. As far as the present enquiry is concerned, the same is governed by the Delhi Police (Punishment & Appeal) Rules, 1980. Procedure for conducting disciplinary proceedings is contained in Rule 16. As far as the said Rule is concerned, there is no provision for appointment of the presenting officer. Sub rule (iii) of Rule 16 inter alia provides as under:

"If the accused police officer does not admit the misconduct, the enquiry officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible, the witness shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay inconvenience or expense, if he considers such statement necessary, provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through

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recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record."

Sub rule (v) of Rule 16, ~~inter alia~~, provides:

"The Enquiry Officer shall also frame questions which he may wish to put to the witnesses to clear ambiguities or to test their veracity. Such statements shall also be read over to the accused officer and he will be allowed to take notes."

10. In view of the aforesaid provisions contained in the aforesaid rules we are unable to accede to the contentions that the entire enquiry is required to be ~~shown~~ ^{board} over-ruled. We have considered the questions which have been put by the enquiry officer to the defence witnesses and we do not find that the enquiry officer can be accused of being biased. The questions put to the ~~defence~~ ~~witnesses~~ are formal. The enquiry officer has not undertaken a searching cross-examination to demolish the veracity of the deposition of the witnesses. Aforesaid contention in the circumstances is rejected.

11. In our judgment there is no merit in the ~~present~~ ^{As far as appreciation of evidence is concerned} aforesaid OA. It has to be remembered that we are not a court of appeal. The function of assessment of evidence is that of Enquiry Officer, Disciplinary Authority and the Appellate Authority. It is not open to us to re-assess the evidence and come to a finding other than one which has found ^{with} favour of the aforesaid authorities. As far as the findings of guilt are concerned, the same are based

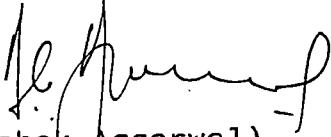
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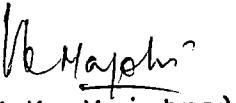
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on evidence which finds place on record. The said findings, therefore, cannot be successfully assailed in the present OA.

12. As far as the procedural aspect of the matter is concerned, we find that the principle of natural justice has been fully complied with. Adequate opportunity has been rendered to the applicant to defend himself at every stage of the enquiry. Principles of natural justice have therefore, been duly met. As far as the order of penalty is concerned, we find that the Appellate Authority has reduced the penalty which has been imposed by the disciplinary authority. The said penalty ^{it} at all ~~leaves~~ ^{had} on the side of leniency. No exception can, therefore, be made to the same.

13. For the foregoing reasons we find that the present OA is devoid of merit and the same is accordingly dismissed. There will, however, be no order as to costs.


(Ashok Aggarwal)
Chairman


(V.K. Majotra)
Member(A)

cc.