

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.2040/94

New Delhi: this the 24th day of DECEMBER, 1999.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

HON'BLE MR.KULDIP SINGH, MEMBER (J)

Shri Suresh Chand,
S/o Shri Ram Singh,
R/o Village & Post Office Beri,
Distt. Rohtak (Haryana) Applicant.

(By Advocate: Shri G. D. Gupta)

Versus

1. Commissioner of Police,
Police Headquarters,
MSO Building, I.P.Estate,
New Delhi- 110 002.
2. The Addl. Commissioner of Police,
Southern Range,
MSO Building, I.P.Estate,
Delhi.
3. The Addl. Deputy Commissioner of Police,
West District,
P. S. Rajouri Garden,
New Delhi Respondents.

(By Advocate: Shri Rajendra Pandita)

ORDER

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

Applicant impugns the disciplinary authority's order dated 15.2.93 (Annexure-A-1) and the appellate authority's order dated 8.9.93 (Annexure-A2). He prays for reinstatement with all consequential benefits.

2. Applicant was proceeded against departmentally on the allegation that on 10.8.91 he along with Constable Satpal were detailed to produce accused Harjinder Singh and Amarjeet Singh from P. S. Moti Nagar lock up in Court of SEM, West District, Delhi. He was further directed to produce accused Amarjeet Singh in

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the Court of MM Tis Hazari, Delhi in FIR No.231/91 u/s 380/448 IPC P.S.Kirti Nagar, Delhi. Both these accused were produced in Court of SEM, West District, Delhi. Their bail was not accepted. Accused Harjinder Singh was sent to lock up (Camp Jail Tihar). The other accused i.e. Amarjit Singh was to be produced at Tis Hazari, Delhi. He was freed from the Court of SEM at about 12-30 p.m. and was thereafter taken to Tis Hazari Court by applicant and was freed from courts at about 3-30 p.m. after production before MM Tis Hazari Delhi. His bail in the case was reportedly accepted but he was to be sent to lock up in the case under sec.107/157 IPC. There was sufficient time with the applicant to take accused Amarjit Singh from Tis Hazari to camp Jail Tihar in time and get him admitted there, but instead of going to Camp Jail Tihar, applicant took the accused to his (accused's) residence at B-3, Rajouri Garden without handcuffs, where the accused threatened, Smt. Ravinder Kaur to finish her off. Eventually applicant brought accused Amarjit Singh to Camp Jail Tihar at about 8-20 p.m., but the accused could not be admitted due to late arrival. Applicant then brought accused Amarjit Singh to P.S.Kirti Nagar at about 8-50 p.m.

3. Applicant was suspended u.e.f. 11.8.91 vide order dated 22.8.91.

4. The Enquiry Officer in his report held the charge as proved. Tentatively agreeing with the Enquiry Officer's findings a copy of the same was given to applicant vide Memo dated 16.12.92 for representation, if any. Applicant submitted his representation on 25.12.92.

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5. Thereupon after perusing the materials on record, and after giving applicant an opportunity of being heard in person on 13.1.93 the Disciplinary authority by impugned order dated 15.2.93 imposed upon applicant the penalty of dismissal from service, which has been upheld in appeal vide order dated 8.9.93.

6. The first ground taken is that the Enquiry Officer relied mainly on the statements of Smt. Ravinder Kaur (who is alleged to have been threatened by accused Amarjit Singh) and Smt. Kuldeep Kaur who were treated as PW.7 and P.W.8 by the Enquiry Officer even though they were not produced as witnesses during the DE and on the other hand their statements recorded during the investigation in pursuance of the FIR were relied upon without getting the statements confirmed by the two ladies, by producing them in the DE and allowing applicant to cross-examine them.

7. Respondents in their reply have stated that as PW.6 and PW.7 could not be traced at the given addresses despite best efforts, their statements recorded during prosecution evidence were brought on the DE file after giving copies of the same to applicant on 8.10.91 under his proper receipt as per provision of Rule 16(1v) Delhi Police (P & A) Rules. Applicant has contended in his rejoinder that these statements recorded during PE could not be used in the DE in the absence of the said witnesses as he could not cross examine them. He contends that these statements of PW.7 and PW.8 were given by them while recording of FIR, and were not attested by the I.O. as required

under Rule 16(iii) Delhi Police (P & A) Rules.

8. Rule 15(3) Delhi Police (P & A) Rules on preliminary inquiry permits statements made during the preliminary inquiry to be brought on to the record of the departmental proceedings when the witnesses are no longer available. All statements shall be signed by the person making them and shall be attested by the Inquiry Officer i.e. the officer conducting the preliminary inquiry. Rule 16(iii) of the aforesaid rules permits the officer conducting the inquiry into the DE 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 an 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 trial.

9. In the present case we notice that the statements of PW 7 and PW 8 made during the recording of the FIR were brought on record in the D.E. The E.O., in his report has stated this had to be done because on enquiries from their neighbour it was learned that they had shifted to Punjab and their addresses were not known and despite several efforts they could not be traced.

10. Shri G.D. Gupta has asserted that the statements of witnesses recorded at the time of recording of FIR are never signed by those witnesses or attested by the officer recording them as this is a violation of the Cr.P.C.

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Hence he contends that the misconduct of applicant cannot be established on the basis of these statements of PW 7 and PW 8 recorded at the time of recording of the FIR and if those statements are not taken into account, the statements of the witnesses are not sufficient to bring home the alleged misconduct of applicant.

11. We have considered this contention carefully, but we find ourselves unable to discard the aforesaid statements of PW 6 and PW 7 recorded at the time of recording of FIR merely because of the reasons advanced by Shri Gupta. Admittedly these statements were recorded during investigation and have been signed by the two witnesses and have also been signed by the two witnesses and have also been attested by an officer superior in rank to the delinquent. Hence the provisions of Rule 16(iv) have been complied with and this ground is therefore rejected.

12. It has next been contended that neither did the Enquiry Officer nor the Disciplinary Authority take into account the defence taken by applicant in his WS, PW 8 as recorded by the police during investigation in pursuance of the FIR. This ground is without merit as the Enquiry Officer as well as the Disciplinary Authority have discussed the grounds taken by applicant in his defence. It is also not correct to state that reliance was placed solely on the statements of PW 7 and PW 8. A perusal of the statement of PW 1 makes it clear that he has supported the prosecution story in all material particulars. Hence this ground is also rejected.

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13. The next ground taken that the impugned orders of the Disciplinary Authority are not speaking orders, has no merit on the very face of it, because a bare reading of the aforesaid order makes it clear that it is a speaking order passed after dealing with each of the applicant's main grounds of defence.

14. The ground taken to assail the impugned order of the appellate authority also fails for the same reason.

15. The next ground taken that if the statements of PW 7 and PW 8 are not relied upon, it would be a case of no evidence against applicant, also has no merit in the light of the clear testimony of PW 1.

16. In Union of India & Others Vs. Upendra Singh (1994) 27 ATC 200 the Hon'ble Supreme Court has made a reference to their judgment in H.B. Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons 1992 Supp.(2) SCC 312 ^{and} ^{in the following} has affirmed ~~in~~ principle

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of

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the matter in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

17. This is not the case where applicant was denied full opportunity to defend himself against the charge, and this Tribunal cannot sit in appeal on the correctness or reasonableness of a decision taken by the competent authority. As noted above it is also not a case of no evidence, and no such violation of procedure has been brought to our notice, serious enough to vitiate the proceedings.

18. In the result the OA fails and is dismissed. No costs.

Kuldip Singh
(KULDIP SINGH)
MEMBER(J).

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN(A).

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