

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

New Delhi this the 23rd Day of July 1999

OA 2196/84

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J) 5

Const. Narinder Singh No. 333/NE
son of Shri Umrao Singh,
aged about 32 years,
R/o Barrack No.4
P.S. Seemapuri, Delhi.

Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. The Lt. Governor of N.C.T.O. Delhi
(through Commissioner of Police)
Police Head Quarters, M.S.O. Building
New Delhi.
2. Additional Commissioner of Police
(New Delhi Range) Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.

Respondents

(By Advocate: Shri Vijay Pandita)

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Shri Shankar Raju, learned counsel
for the applicant and Shri Vijay Pandita, learned counsel
for the respondents.

2. The applicant, a Constable in Delhi Police, is aggrieved by the order of the disciplinary authority dated 16.6.94, as at Annexure A-1, which inflicts the penalty of forfeiture of five years approved service entailing reduction of pay and providing that he would not earn increment of pay during the period of reduction and on the expiry of this period, the reduction will have the effect

(b)

of postponing of his future increment of pay. An appeal against this order was also rejected by the appellate authority on 18.8.94 which had confirmed the disciplinary authority's order.

3. The applicant was served with a charge memo stating that he was detailed to perform his duty at Kachcha Road leading towards 100 Ft. Road from GTB Hospital, as 2/3 incidents of snatching, robbery and stabbing had already taken place, but he did not bother to perform his duty being a beat Constable and left the place before time. The summary of allegation which is stated to have been given on August 1993, reads as follows:

"On 28.6.93 you Const. Narender Singh No. 333/NE were detailed on duty at Kachcha Road leading towards 100 Ft. Road from G.T.B. Hospital, as 2/3 incidents of snatching, robbery and stabbing had already taken place, but you did not bother to your duty being a beat Constable and left the place before time. You also quarreled with a Dhaba owner namely Jagdish under the influence of liquor. Your absence from duty led to a murder of one Ram Nath at Friends colony Industrial area at the same place of P.S. Seemapuri.

The above act on your part of Const. Narender Singh No. 333/NE amounts to gross negligence, remissness, carelessness and dereliction in the discharge of your official duties which renders you liable for departmental action u/s 21 of Delhi Police Act, 1978."

The enquiry officer proceeded to hold a enquiry in accordance with the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980. In February 1994, a fresh charge was served on him, which changed the date from 28.6.94 to 24.6.94 but was identical in all other particulars. After holding an enquiry, a show-cause notice was issued and the Enquiry Officer came to the finding that all the charges except the charge that he was under

influence of liquor had been established. This was accepted by the disciplinary authority and the appellate authority which had issued the impugned orders.

4. Shri Shankar Raju, learned counsel for the applicant submits that the impugned orders are totally against the law. He states that there was no evidence whatsoever to show that the applicant was detailed to perform his duty at Kachha Road. He refers to the evidence given by PW-1 Const. Pradeep Kumar who was working as Chitha Munshi on the relevant date and he had categorically stated that the applicant was detailed for duty in the beat of Janta Flats Nand Nagri as he was a beat Constable for that area. The SHO however in his deposition had submitted that he had detailed the applicant on duty at Kachha Road leading towards 100 Ft. Road from GTB Hospital, as 2/3 incidents of snatching, robbery and stabbing had already taken place there. In the cross examination, he repeated the same statement but however, admitted that the applicant was not briefed by him or by any other officer. Shri Raju says that the applicant was detailed for duty in the beat of Janta Flats Nand Nagri and he was not orally instructed by the SHO to perform duty in Kachha Road. According to him, this is an after thought as the SHO wanted to evade his responsibility for the incidents which had taken place on 24.6.93. Shri Raju submits that having been given written instruction to perform his duty in one place it is not clear as to why SHO should detail him for duty elsewhere. It is also not brought out that he was asked to do additional duties in any beat apart from his regular beat. The applicant had clearly stated that no witness had testified to his absence from his normal beat during the enquiry. The clear statement of Chitha Munshi that he had given written order detailing the applicant for regular beat

in Janta Flat Nand Nagari has also not been controverted anywhere. In the circumstances the findings of the E.O who relied on the statement of the SHO who had a personal axe to grind should be treated as perverse and there is no evidence at all to substantiate the charge against the applicant.

Shri Shankar Raju also contends that there is no provision in the relevant rules to conduct a *denovo* enquiry after the earlier enquiry had proceeded some witnesses were examined and the applicant had given his defence statement. It is his stand that from the defence statement of the applicant transpired that no such murder as alleged had taken place on 28.4.93, and after a lapse of six months and after the enquiry progressed substantially they have changed the date to 24.6.93. He also contends that the witnesses who were examined earlier said that 28.6.93 was the date of murder and they changed their views subsequently. According to him, this conduct of *denovo* enquiry is in violation of the rules and on this ground alone, the application deserves to be allowed.

As regards the charge that he had quarrelled with a Dhaba owner namely one Jagdish under the influence of liquor, the Jagdish was examined and he had clearly denied having any quarrel. The E.O ~~become~~ proceeded to disregard his statement and held this charge also to be established. The disciplinary authority has not applied his mind to the various issues and in his order dated 16.6.94 had mechanically agreed with the Enquiry Officer. Shri Raju submits that the enquiry officer's finding itself is perverse as it disregarded the categorical denial of the Dhaba owner regarding the quarrel and proceeded to hold the charge as proved.

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5. Shri Vijay Pandita, learned counsel for the respondents resists the OA. He says that there is some evidence on the basis of which the enquiry officer came to his finding. He had relied on the submission of the SHO and even if there is a single witness ^{had} given a statement, it is sufficient to come to the finding when it is relied upon. He also does not agree that submission of fresh charge has in any way caused prejudice to the applicant, what has happened was that there was a typing mistake where the date 28.6.93 was mentioned when the correct date was 24.6.93. When the mistake was detected the statement of allegation was also corrected and served on the applicant and a further enquiry was held. He is, however, not able to explain as to how the earlier enquiry had progressed for six months without noting the mistake.

6. We have considered the submissions of both counsel and have also gone through the materials on record. We note that a mistake had been made initially regarding the date of murder which was on 28.6.93 instead of 24.6.93 on which date the actual murder had taken place. However, we are surprised that a number of witnesses had been examined during the first enquiry and this mistake was not detected by any of them. Even if it is held that it was a typing mistake and had not caused any serious prejudice to the applicant, we still find ourselves in agreement with the contention of Shri Raju that there is no evidence in support of the charge and that no reasonable person could have come to the finding ^{what} the enquiry officer did. We are conscious of the limitation and scope of this Tribunal with regard to the disciplinary proceedings in exercise of its powers of judicial review. We cannot reappreciate the evidence or to substitute our judgment to that of the competent authority. However, we find that while the charge against the applicant was that he was detailed for

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duty at Kachcha Road, there is a clear statement by the Chitha Munshi that he was detailed for duty elsewhere and no evidence whatsoever has been shown to establish his absence from his own beat. We are informed by Shri Raju that Kachcha Road is at a distance of one KM from his regular beat. If a constable had performed his duties in his own beat at Janta Flats he could not be excepted to be present in any other area. While the charge gives the impression that he was detailed for duty only at Kachcha Road and not at Janta Flats, the appellate authority in his order dated 18.8.94 had stated in para 3 of his order that he sought further clarification from Acting SHO, who said that he had instructed the applicant to remain available on Kachcha Road also apart from his duties at LIG Flats. This is altogether a different version which has been ^{not} reflected in the charge or in the enquiry. We note that the E.O had placed total reliance on the evidence of SHO while coming to his finding and the SHO has shifted his stand later.

7. We also find no material whatsoever in support of the E.Os finding that the applicant had quarrelled with the Dabha owner when the person concerned himself had denied this in his statement. Neither the disciplinary authority nor the appellate authority had gone into this question and had just accepted the E.Os finding without any further application of mind.

8. For the reasons stated above, we find there is no evidence at all which the authorities could have relied upon in coming to the finding that the applicant

(V)

was guilty as charged. In the circumstances, we allow the OA and quash the order of the disciplinary authority dated 16.6.94 and the order of the appellate authority dated 19.9.94. The respondents shall take further action to implement our direction and to give to the applicant the consequential benefits in accordance with the rules within a period of three months from the date of receipt of a copy of this order. The OA is finally disposed of with the above direction. No costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

V. Ramakrishnan

(V. Ramakrishnan)
Vice Chairman (A)

vtc.