

Central Administrative Tribunal
Principal Bench

O.A. 515/94

(15)

New Delhi this the 24 th day of July, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

Jeet Singh, Sub-Inspector No. 2604/D,
Delhi Police, Posted at PS Welcome,
East Delhi.

By Advocate Shri Hori Lal. Applicant.

Versus

1. Union of India, through the Addl. Commissioner of Police, New Delhi Range, PHQ, I.P. Bhawan, New Delhi.
2. The Deputy Commissioner of Police, North-East District, Seelampur, Delhi.

.... Respondents.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who is working as Sub Inspector in Delhi Police is aggrieved by the order dated 26.8.1993 passed by Respondent 2 giving him the punishment of withholding his next increment for a period of 5 years which has the effect of postponing his future increment of pay. It was also ordered that the period when he was under suspension from 15.9.1992 should be treated as not spent on duty. The first appeal addressed to the Addl. Commissioner of Police against the penalty order has also been rejected by the impugned order dated 25.1.1994.

2. A departmental inquiry had been instituted against the applicant on the allegations that while he was posted in Police Station Welcome on 25.9.1992, a complaint

(16)

had been made by one Smt. Maya Devi that the applicant had demanded Rs.2000/- in order to arrest two accused persons wanted in case FIR No. 238/92 u/s 307/34 IPC in which her husband had been allegedly stabbed which was under investigation in that police station. It was further alleged that Shri R.K. Pandey, ACP after forming a raiding party had reached Guru Teg Bahadur Hospital along with the complainant who paid Rs.1380/- to the applicant which amount was allegedly recovered from him. The inquiry was entrusted to the Addl. Commissioner of Police, North-East District, Delhi who submitted his findings in his report dated 7.7.1993 that the applicant was guilty of the charge. The disciplinary authority agreeing with the findings passed the impugned order dated 26.8.1993 which had also been upheld on appeal by the appellate authority.

3. Shri Hori Lal, learned counsel for the applicant has challenged the impugned orders on the following main grounds:

(i) That the respondents have not complied with the provisions of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules'). His contention is that the permission of the Addl. Commissioner of Police as to whether a criminal case should be registered and investigated or a departmental inquiry should be held had not been obtained before proceeding with the departmental inquiry against the applicant.

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(ii) That an entirely false and fabricated case has been concocted by Shri R.K. Pandey, ACP, who was personally prejudiced against the applicant as he, while posted as Incharge Police Post Seemapuri, had failed to comply with certain illegal orders that his relative be assisted in the construction of an unauthorised room in the DDA Flat at Dilshad Garden. The applicant has also submitted that Shri R.K. Pandey had been transferred to Delhi Cantt. as ACP and relieved on 25.9.1992 afternoon as per the transfer order dated 25.9.1992 and, therefore, there was no alleged complaint received by him from Smt. Maya Devi on that date. He has also submitted that the applicant who was busy in some court case on that date had thereafter reached the office at 2 P.M. and, therefore, he has questioned the fact that he could not have been present at Guru Teg Bahadur Hospital at the same time as alleged by ACP Shri R.K. Pandey or Smt. Maya Devi or Suresh. Therefore, he has submitted that the entire story is false and fabricated.

(iii) He has submitted that there are material contradictions in the statements of witnesses. He has also pointed out that in the medical certificate of Guru Teg Bahadur Hospital the injured person is stated to be in Ward No. 21 whereas in the impugned order dated 26.8.1993, it is mentioned that Shri Pandey along with the complainant and her relative had reached at Ward No. 24 and Suresh Chand had handed over the amount of Rs.1380/- to the

S/

18

applicant. Similarly, he has also stated that at one place it is stated that he had demanded Rs.5000/- and at another place it is mentioned as Rs.2000/-.

For these reasons, the learned counsel has submitted that the impugned penalty order and the appellate order cannot be sustained and they should, therefore, be quashed and set aside with consequential benefits.

4. The respondents in their reply have submitted that the inquiry proceedings initiated against the applicant have been carried out in accordance with the rules and the punishment order has been passed by the disciplinary authority after taking into account the evidence on record and that he has taken a lenient view in passing the order of withholding of his next increment for a period of five years. The respondents have submitted that a departmental inquiry was initiated against the applicant by order dated 26.10.1992 and was entrusted to Shri Ajay Kashyap, the then Addl. DCP NE District, Delhi, who submitted his report holding the applicant guilty of the charge which was also served on the applicant on 7.7.1993. They have submitted that the permission under Rule 15(2) of the Rules had been obtained over telephone before starting the departmental inquiry and later on orders have been obtained from the higher officer. Shri Vijay Pandita, learned counsel, has submitted that as this was a trap case, no preliminary inquiry as such had been conducted in this case against the applicant. However, the approval of the Addl. Commissioner of Police had been obtained by order dated 29.1.1993. He has also submitted that as Shri R.K. Pandey, ACP has not been made a party in

8

(19)

the proceedings, the allegations of bias made in the O.A. are not sustainable. The allegation that the penalty order dated 26.8.1993 has not been passed by the competent authority has also been controverted by the learned counsel for the respondents who submits that under Rule 4 of the Delhi Police (Appointment and Recruitment) Rules, 1980, the Deputy Commissioner of Police being the appointing authority for Sub-Inspectors, he can also exercise the powers of the disciplinary authority. This fact was not controverted by Shri Hori Lal, learned counsel, in his reply. Shri Vijay Pandita, learned counsel also submitted that Shri Pandey, ACP was one of the prosecution witnesses and the applicant has been given ample opportunity to cross-examine him and other witnesses. He has, therefore, submitted that neither the disciplinary authority's order or the appellate authority's order suffers from any legal infirmity nor is there any power vested in the Tribunal to reappreciate evidence as if it is a court of appeal to set aside the impugned orders. He relies on State of Tamil Nadu vs. S. Subramaniam. (JT 1996(2) SC 114).

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. Rule 15 of the Rules provides as under:

"15. Preliminary enquiries. - (1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter (s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a preliminary enquiry need not be held and Departmental enquiry may be ordered by the

18/

20
disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.

(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

(3) xxx

From the above it is seen that the preliminary inquiry is a fact finding inquiry. In the present case, admittedly, it was a trap case and the respondents have not relied on any preliminary inquiry report in the departmental inquiry. They have stated that they had received the permission of the Addl. Commissioner of Police telephonically before starting the departmental inquiry on 26.10.1992 and had thereafter received the permission on 29.1.1993. The prior approval of the Addl. Commissioner of Police referred to in Rule 15(2) of the Rules can only mean the prior approval of the authority obtained in writing, which in this case was obtained on 29.1.1993. However, in this case, the existence of a preliminary inquiry as a fact finding inquiry has not been established by the applicant following which the prior approval of the Addl. Commissioner of Police concerned has to be obtained as to whether the criminal case should be registered or a departmental inquiry should be held. In the appellate authority's order dated 25.1.1994, a specific reference has also been made to this aspect of the matter, namely, that the DE was ordered by DCP, North East District on 26.10.1993 (sic 1992) and was entrusted to Addl. DCP, North-East District who returned the same as permission under Rule 15 was not available in the file. It is stated that permission was later on obtained

From Addl. Commissioner of Police on 29.1.1993 and the file was again given to Addl. DCP, North-East District for conducting a disciplinary inquiry. It is also noted that all the PWs and DWs were examined after obtaining the requisite permission. In the facts and circumstances of the case, therefore, we are unable to agree with the contentions of the learned counsel for the applicant that the provisions of Rule 15(2) have not been complied with or there is any infirmity on this ground.

7. The applicant has not placed on record any materials to substantiate his claim that Shri R.K. Pandey, ACP, was biased against him nor do we have any reason to accept his contention that the whole case relating to the charge was fabricated by the senior officer. Shri Hori Lal, learned counsel, had placed much emphasis on the fact that Shri Pandey, ACP had been transferred to another place on 25.9.1992, when Smt. Maya Devi was alleged to have lodged her complaint with him on that day. As the transfer order itself says that he had relinquished charge of the office of ACP, HQs, North East District only in the afternoon of 25.9.1992, it cannot be concluded that the whole case is a fabricated case and no such complaint could have received by the ACP during that day.

8. The discrepancy like the Ward numbers pointed out by the learned counsel for the applicant is neither significant in the facts of the case nor does it in any way prejudice his case so as to warrant setting aside the impugned penalty orders. In any case, the departmental proceedings have been held in which both prosecution and defence witnesses have been called and the applicant has been

(22)

Given reasonable opportunity to defend his case. It is settled law that in exercising the power of judicial review this Tribunal cannot reappraise evidence or substitute its own finding for that of the competent authority. It is settled law that judicial review is not the same as an appeal from the decision but is a review of the manner in which the decision is made and it is meant to ensure that the delinquent official receives fair treatment (See **Tata Cellular Vs. Union of India (1994 (6) SCC 651)** and **Union of India Vs. B.S. Chaturvedi (1995 (6) SCC 749 at 759-60)**). In the circumstances the pleas taken by the applicant's counsel are baseless and are accordingly rejected. Similarly, we also find no substance in the other contentions raised by Shri Hori Lal, learned counsel and find that the impugned orders are based on evidence of witnesses.

9. Taking into account the totality of the facts and circumstances of the case, since we are satisfied that the applicant has received fair treatment and has been afforded a reasonable opportunity to put forward his defence before the disciplinary authority, and the conclusions arrived at by the disciplinary authority are neither arbitrary or perverse, there is no justification to interfere in the case. In the result, the application fails and is dismissed. No order as to costs.


(K. Muthukumar)
Member (A)

"SRD"


(Smt. Lakshmi Swaminathan)
Member (J)