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Central Administrative Tribunal
Principal Bench

(7)

O.A.No.519/94
with
O.A.No.558/94

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi this the 20th day of July, 1999

O.A.No.519/94:

Kehar Singh
Head Constable (Driver)
s/o Shri Sohanlal
r/o 39C, Police Colony
Model Town, Delhi.

..... Applicant

(By Shri Shyam Babu, Advocate)

Versus

1. Deputy Commissioner of Police
South West District, Vasant Vihar
New Delhi.
2. Addl. Commissioner of Police
(Southern Range)
Police Headquarters
I.P.Estate
New Delhi.
3. Deputy Commissioner of Police
Headquarters(I), Police
Headquarters, I.P.Estate
New Delhi.

.... Respondents

(By Shri Vijay Pandita, Advocate)

O.A.No.558/94:

Daya Nand (2540/SD) and (732/D)
s/o Shri Bani Singh
r/o Quarter No.9/B, Police Station
Delhi Cantt.
New Delhi -110 010.

..... Applicant

(By Shri Shyam Babu, Advocate)

Versus

1. Deputy Commissioner of Police
South West District, Vasant Vihar
New Delhi.
2. Addl. Commissioner of Police,
(Southern Range), Police
Headquarters, I.P.Estate
New Delhi.
3. Deputy Commissioner of Police,

CSB

Headquarters (I),
Police Headquarters
I.P.Estate
New Delhi.

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4. Addl. Commissioner of Police(A)
Police Headquarters, I.P.Estate
New Delhi.

.... Respondents

(By Shri Vijay Pandita, Advocate)

O R D E R (Oral)

By Reddy. J-

These two OAs are disposed of by a common order as the impugned order passed against both these applicants was one composite order.

2. The applicant in OA No.519/94, is a Constable and the applicant in the other OA No.558/94 is the ASI. This matter arises in departmental proceedings. It was alleged against the applicants that while they were performing night patrolling duty on 10.10.1988 in the area of P.S.Mayapuri at about 2.30 A.M. they apprehended two thieves along with property stolen from C-66, Mayapuri-II with the assistance of one Shri Munshi Ram and on the same night they released both the accused persons alongwith stolen property, in consideration of illegal gratification, received by the delinquent officers from the accused. On these allegations a departmental enquiry was initiated against them. The enquiry officer has conducted the enquiry and submitted his report to the disciplinary authority. On the basis of the enquiry, the enquiry officer found that the applicants guilty of charges.

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After receipt of the enquiry officer's report, the disciplinary authority considered the record of enquiry and the findings given by the enquiry officer and other evidence on record passed the impugned orders on 12.2.1990 awarding the penalty of forfeiture of one year approved service permanently to both the applicants entailing proportionate reduction in their pay. A Corrigendum dated 12.3.1992 was subsequently issued, read in para 5 of the order relating punishment. The applicants filed an appeal against the disciplinary authority's order which was dismissed on 16.9.1993. The orders of the disciplinary authority, including Corrigendum of 12.3.1992, the appellate authority and the penalty order dated 12.3.1992 are under challenge in this OA.

3. The learned counsel for the applicant contends that inasmuch as the disciplinary authority found that there was no evidence at all against the applicants and that the charge was not substantiated, the applicants ought to have been acquitted of the charges levelled against them. It is contended that the action of the disciplinary authority, in relying upon the findings arrived at in the preliminary enquiry and in awarding punishment was clearly erroneous. It is the case of the applicants that the proceedings of the preliminary enquiry was not furnished to the applicants and that there was no occasion for the applicants to cross-examine the concerned witnesses on the findings arrived at in the preliminary enquiry. Learned counsel for the respondents however submitted that the impugned orders were passed after due consideration by the disciplinary

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authority and the appellate authority and that there was no warrant for interference.

4. The only charge against the applicants is the release of the accused along with stolen property in consideration of illegal proceedings. The disciplinary authority in the impugned order clearly stated as follows:

"I have carefully gone through the findings of the enquiry and also heard the defaulters in the O.R. on 25.1.1990. From the proceedings of the D.E. it is clear that the charge of accepting illegal gratification could not be substantiated at all. However it was noticed that the witnesses who had earlier deposed against the defaulters in the P.E. had turned hostile during the D.E. proceedings. Nevertheless the enquiry officer concluded, on the basis of the findings of the P.E. that the charge of apprehending the thieves and letting them off without taking any action was substantiated. A study of the D.E. proceedings pointed out to the fact that both the defaulters who otherwise have a clean record of service got panicky and in order to save them from punishment approached the complainants to help them to save their job and thus the witnesses turned hostile."

5. It is clear from the above order of the disciplinary authority that the charge of the illegal gratification was not substantiated. But the disciplinary authority solely based his conclusion on

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the findings arrived at in the preliminary enquiry held that the charge against the applicants was substantiated. It is the case of the applicant that the preliminary enquiry proceedings was not furnished to the applicant. It is nowhere stated in the enquiry officer's report that the said proceedings was furnished to the applicant. Admittedly, all the witnesses that were examined during the preliminary enquiry turned hostile in the domestic enquiry. Now this procedure is clearly erroneous and is not permitted either under the rules or on principles of natural justice. The preliminary enquiry report and the findings therein at the preliminary enquiry are not evidence in the enquiry conducted by the enquiry officer as the applicant was not given an opportunity to cross-examine the witnesses therein. It is well settled that the preliminary proceedings and the findings arrived in the preliminary enquiry cannot form the basis for any conviction in the departmental enquiry. Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules also prohibit placing reliance on the preliminary enquiry proceedings. The Principal Bench of this Tribunal in OA No.1788/91 (Shri Jai Singh Vs. Delhi Administration and Others), decided on 31.8.1995 clearly held that the evidence given by the Constable in that case in the preliminary enquiry as well as the statement of the ASI outside the preliminary enquiry was not admissible under Rule 15(3) and hence could not be relied upon by the enquiry officer. Thus there is also a contravention of Rule 15(3) of the Delhi Police (Punishment and Appeal) Rules, 1980.

6. In view of the above, we have no hesitation but

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to hold that the findings arrived at by the enquiry officer as well as in the impugned orders by the disciplinary authority and the appellate authority are vitiated.

7. Both the OAs are, therefor, allowed. The impugned orders of the disciplinary authority including Corrigendum of 12.3.1992 as well as appellate authority are quashed and set-aside.

8. It is stated that the applicant's promotion was held up by virtue of the impugned orders. The respondents are directed to consider the applicant's case for promotion as per law and in accordance with the rules on the subject. There shall be no order as to costs.

(R.K.AHOJA)
Member(A)

(V.RAJAGOPALA REDDY)
Vice-Chairman(J)

/RAO/

Original judgement in OA 579/94

by
26.2.99
C.O. CII

