

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 571/94

199

T.A. No.

DATE OF DECISION 30-8-99

Sj.Jai Dev

....Petitioner

Sh.Shankar Raju

....Advocate for the
Petitioner(s)

VERSUS

Commissioner of Police, Delhi
and others.

....Respondent

Sh.Raj Singh, learned counsel through Respondents.
proxy counsel Sh.Bhaskar Bhardwaj

CORAM

The Hon'ble Shri V.Ramakrishnan, Vice Chairman(A)
The Hon'ble Smti Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 571/94

New Delhi this the 30th day of August, 1999

Hon'ble Shri V. Ramakrishnan, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Jai Dev,
S/o Shri Mehar Singh,
Qr. No. N-9 'L' Type,
New Police Lines,
Kingsway Camp,
Delhi.

... Applicant.

By Advocate Shri Shanker Raju.

Versus

1. Commissioner of Police Delhi,
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
2. Additional Commissioner of Police,
Northern Range, New Delhi,
Delhi Police Headquarters, MSO Bldg.,
I.P. Estate, N.Delhi.
3. Deputy Commissioner of Police,
North West District, Delhi,
Police Station, Ashok Vihar,
Delhi.

... Respondents.

By Advocate Shri Bhaskar Bhardwaj proxy for Shri Raj Singh.

O R D E R

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

The applicant who was ASI in Delhi Police, is aggrieved by the punishment order passed by the respondents dated 15.6.1992 forfeiting three years service permanently and reduction of pay by three stages and dismissal of the appeal against this order by the appellate authority by order dated 17.5.1993. He has also challenged the initiation of the departmental proceedings

JB

(X)

and the order treating his suspension period as illegal.

2. While the applicant was posted at Police Station Mukerji Nagar, he received a complaint on 1.8.1990 against one meat seller of village Malikpur who had attempted to rape one minor girl of seven years in his shop at Village Malikpur. It is alleged that when the parents of the girl came to the Police Station, the applicant looked into their complaint, but he did not register the case against the defaulter or take legal action. It is further alleged that he misbehaved with the father of the girl and refused to give a receipt. It is stated that he had also told the complainant that there was no point in getting a case registered and advised him to come/next morning when he would get some compensation from the accused. Later, when the complainant telephoned the PCR, he went to the house of the complainant in the night in drunken state and misbehaved with him, took out his revolver and threatened them with dire consequences. After conducting an inquiry by the then SHO, Mukerjee Nagar, departmental proceedings were initiated against the applicant.

3. The learned counsel for the applicant has challenged the punishment order as well as the appellate authority's order which have been passed on conclusion of the departmental proceedings on a number of grounds. He has submitted that the Inquiry Officer had not held the applicant guilty of the charge in his findings. He has submitted that there is no room for doubt to disagree with the findings of the Inquiry Officer by the disciplinary authority. He has also submitted

JB

9

that the disciplinary authority had not given the reasons for disagreement, if any, as required under Rule 16(1) of the Delhi Police (punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules'). According to him, the disciplinary authority had merely made his observations that non-appearance of material prosecution witnesses i.e. the parents of the victim and a social worker, in spite of several efforts made by the SHO and ACP Kingsway Camp itself is sufficient to prove that the applicant has succeeded in persuading them not to depose against them. He had, therefore, stated that 'this achievement of the defaulter officer should be taken as his default rather than giving him benefit of his main, ^(sic) tactics'. Learned counsel has very vehemently submitted that the disciplinary authority can disagree with the findings of the Inquiry Officer only based on evidence which he has not done and according to him the SHO (PW-4) has also stated that no offence has been proved. He has relied on the judgement of the Supreme Court in Re Reference under Article 317(1) of the Constitution of India (1990 (4) SCC 262) and Kuldip Singh vs. The Commissioner of Police & Ors. (JT 1998 (8) SC 603). He has submitted that the entire evidence of the witnesses i.e. the statements have to be looked into as a whole and part of the statements cannot be relied upon in isolation as if it is a statutory provision. According to the learned counsel, he has submitted that the statement of Smt. Ram Dulari, complainant was such that there was no question of applicant registering a case. He also submits that the senior officer had also the same view and, therefore, there was no evidence on which the applicant could have been departmentally dealt with. Learned counsel has submitted that

(9)

in these circumstances, the impugned punishment orders should be quashed and set aside.

4. We have seen the reply filed by the respondents and heard Shri Bhasker Bhardwaj, learned proxy counsel. They have submitted that the disciplinary authority is not bound to agree with the findings submitted by the Inquiry Officer and he could take an independent decision based on the evidence on record in the departmental inquiry. Learned proxy counsel has submitted that the disciplinary authority had given detailed reasons with the findings of the Inquiry Officer which had been given to the applicant. He has further submitted that the applicant had also been given proper opportunity to defend himself. The representation given by the applicant has also been considered by the disciplinary authority before imposing a penalty of forfeiture of three years approved service permanently and reduction of his pay by three stages for a period of three years with effect from issue of the order. On appeal filed by the applicant, the appellate authority has reduced the punishment of forfeiture to one year service for a period of one year by order dated 17.5.1993. In the facts and circumstances of the case, learned proxy counsel has also submitted that the grounds taken by the applicant are not tenable and the O.A. may be dismissed.

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

18.

10

6. In the departmental inquiry held against the applicant, the Inquiry Officer has held, after considering the evidence on record, that the charge against the applicant was not proved. The disciplinary authority has in his remarks on the findings of the Inquiry Officer stated that at a glance of the statements/cross examination of various PWs, it indicates clearly that:

- "(i) That the defaulter ASI had refused to register the case;
- (ii) That the defaulter officer had suggested the complainants against the registration of the case and advised to compromise with the accused in a case as heinous as the rape of a minor girl of 7 years;
- (iii) That the defaulter officer had visited the house of the complainants at odd hours i.e. 1.00 a.m and used hot words with them and also threatened them by at least attracting their attention to the revolver which was in his possession.
- (iv) That the ASI had expressed his unhappiness and anxious over the complainant's effort to seek police action on his complaint by ringing No. 100 the PCR.
- (v) The defaulter officer had not been deputed by the SHO to visit the house of the complainant at dead of the night."

According to him, the allegations against the applicant have been proved beyond any reasonable doubt in the inquiry after cross-examination by the defaulter. This statement had been given to the applicant who had also made the representation against it and hence the principles of natural justice of affording reasonable opportunity to the applicant to defend his case have been fully complied with in this case. The disciplinary authority had also noted that non-appearance of the PWs i.e. the parents of the victim and a social worker in spite of several efforts made by the SHO and ACP, Kingsway Camp, shows that the defaulter officer had prevented them from deposing against them. He has also referred to the fact that the applicant deserves a severe punishment as he had failed

18

11

to register a case on the complaint of the parents of the minor girl against their neighbour Rafique, Meat Seller who had attempted to rape their minor girl of seven years age. We find from the impugned punishment order passed by the disciplinary authority that he has stated that he has gone through the PWS and DWS/findings of the Inquiry Officer and representation of the applicant before arriving at his conclusion, in particular, with regard to the five points he had mentioned, reproduced above. He had accordingly passed the punishment order. On perusal of the evidence of the PWS and DWS, we are unable to agree with the contentions of the learned counsel that the conclusion of the disciplinary authority is based on no evidence or is arbitrary or perverse. On perusal of the English translation of the complaint of Smt. Ram Dulari dated 1.8.1990, copy furnished by the learned counsel for the applicant is placed on record, it is seen that a complaint had been made by the parents of the minor girl regarding the undesirable activities of their neighbour Rafique, Meat Seller and they had requested the SHO Police Station Mukerjee Nagar to drive off this man from that place and protect the public. The applicant's contentions that no offence had been made out by/registering the case and more so it should have been registered by the Duty Officer cannot be accepted in the facts and circumstances of the case. Therefore, we do not find the decision of the disciplinary authority in any way arbitrary. As mentioned above, the disciplinary authority had also given the reasons for his disagreement with the findings of the Inquiry Officer and had given an opportunity to the charged official to present his case which has also been considered by the competent authority. We find that the appellate authority has also

Y.S.

(2)

given a detailed and reasoned order taking into account all the facts and circumstances of the case. In the circumstances, having regard to the settled law on Judicial Review, we do not consider that there is any justification to interfere with the appellate authority's order which had reduced the punishment of forfeiture of one year approved service permanently with reduction in pay by one stage. It is settled law that the Tribunal should not act as a Court of Appeal to reappreciate the evidence or substitute its findings for that of the competent authority unless there are exceptional grounds which are absent here. See the observations of the Supreme Court in Kuldip Singh's case (supra) where it has been reiterated that interference by the Courts/Tribunal will be permissible only when the findings are perverse or arbitrary or mala fide. In the present case, we are satisfied that the departmental inquiry held against the applicant has been held in accordance with law and Rules, including the principles of natural justice, and the punishment orders passed by the competent authorities are, therefore, valid as their conclusions are based on the evidence on record. There is no justification to interfere in the matter.

7. In the result, for the reasons given above, as there is no merit in the application, the O.A. fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

V. Ramakrishnan
(V. Ramakrishnan)
Vice Chairman (A)

'SRD'