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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 583/94

New Delhi, 30th September, 1994

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

S.I. Prem Chand No. D/1547,
Son of Shri Atma Ram,
Employed at North-West Distt.,
R/O Flat No. 24, Agrha Kunj,
Sector 13, Rohini,
Delhi - 110085.

... Applicant

By Advocate Shri Shankar Raju

Versus

1. The Lt. Governor of NCT of
Delhi through Additional
Commissioner of Police
(Northern Range), Police Hqrs.
MSO Building, I.P.Estate,
New Delhi.

2. The Dy. Commissioner of Police,
North-West District,
Ashok Vihar, Delhi-52.

... Respondents

By Advocate Shri B. S. Gupta

ORDER

In this application Shri Prem Chand, S.I. Police has prayed for expunction of the adverse remarks recorded in his ACRs for the period 19.11.1992 to 31.3.1993 in column 14, 16 and 19 and direct the respondents to categorise him as 'very good'. It has also been prayed that his name be removed from the list of officers of doubtful integrity.

2. The applicant was appointed as a temporary S.I. on 7.4.1977 and was confirmed as such w.e.f. 3.10.1980. It appears that while posted at P.S. Adarsh Nagar, he was proceeded against departmentally vide order dated 29.9.1992 on the charge that he accepted Rs.1,000/- for opening the lock of one of the rooms of complainant.

Shri Suresh Chander which had been locked by the police after a tenant's murder in that room. The enquiry officer submitted his findings and held the defaulter guilty of all the charges. Agreeing with the EO's findings a copy of the same was served upon the applicant who submitted his representation dated 19.3.1993. The disciplinary authority considered the representation and also gave the applicant a hearing. It appears that the main plea taken by the applicant was that there was no evidence against him and that the complainant had submitted a false complaint which he himself had admitted during the departmental proceedings. The disciplinary authority, however, held that the complainant had been pressurised by the defaulter to depose favourably before the enquiring officer and held that illegal gratification had been demanded and received by the defaulter. Accordingly, by order dated 4.6.1993 the disciplinary authority dismissed the applicant from service.

3. The order of dismissal was, however, set aside by the appellate authority (Addl. Commissioner of Police) by his order dated 8.10.1993. The appellate authority held that the applicant's denial of having demanded or accepted a bribe from the complainant was supported by the complainant's own statement during the course of the departmental enquiry that he had filed a false complaint because the applicant had refused to deposit the goods of the deceased in the police station. The appellate authority further noted that the complainant when summoned as prosecution witness in the departmental

enquiry had not substantiated the charge and was not subjected to any cross examination by the appellant. No doubt, later on the complainant had sent a letter stating that his earlier allegation of demanding bribe by the applicant was correct, and he had to withdraw the complaint only under pressure, and this letter had been taken cognisance of by the enquiry officer as well as the disciplinary authority, but as the complainant had not been cross examined, the principles of natural justice have been violated. The appellate authority held that basing the applicant's dismissal on a letter by the complainant which was never subjected to any cross examination by the defaulter was unjustifiable. Furthermore, the enquiry officer had not examined the Inspector who conducted the preliminary enquiry, which should have been done particularly when the complainant had not supported his complaint when called as a prosecution witness. The appellate authority held that by not taking the preliminary enquiry findings into consideration and by dropping the Police Inspector who conducted the preliminary enquiry from the list of prosecution witnesses, the case of the prosecution had been poorly served.

4. The applicant's case is that the adverse remarks recorded in his ACR for the period 19.11.1992 to 31.3.1993 in columns 14, 16 and 19, were based upon this solitary complaint, and as he had been completely exonerated in the departmental proceedings arising out of the complaint, these remarks should be expunged.

5. The respondents have contested the O.A. and state that the applicant was given the adverse remarks in his ACRs by the reporting officer which were agreed to by the accepting officer. The applicant had preferred an appeal against these adverse remarks to the Addl. Commissioner of Police (appellate authority) in the DE which was partially accepted to the extent that the remarks recorded in column 2 against 'honesty', that he was dismissed from service for demanding and receiving illegal gratification, was deleted, but the other remarks were allowed to remain. Attention has been drawn to that portion of the appellate authority's order dated 8.10.1993 in which it has been stated that "in the PE there was some evidence of the wrong doing by the appellant, and if the PE finding had been taken on record and the officer conducting the PE had been examined, it would have strengthened the case against the appellant". It is stated that the claim of the applicant that there was no evidence against him is not tenable.

6. Column 14 of the ACR is for reliability, against which it has been stated that the applicant is not reliable due to his corrupt practices. Column 16 is for overall assessment, against which it has been stated that the applicant's integrity is doubtful. Column 19 is for grading (outstanding/very good/average/below average), against which the applicant has been graded, 'below average - C'.

7. Upon the representation on the adverse remarks filed by the applicant, while the portion against

column 2 for honesty, wherein it was stated, "dismissed from service for demanding and receiving illegal gratification" was set aside, the Addl. Commissioner (who was also the appellate authority in the DE) in his order dated 13.1.1994, which was produced for my inspection by the respondents, stated that there was sufficient evidence to warrant the remarks "work and conduct not satisfactory" and grade the ACR as 'C'. Accordingly, he directed that the remarks in column 2 that the applicant had been dismissed from service for "demanding and receiving illegal gratification" be deleted but the remarks in columns 14, 16 and 19 would stay and the ACR would be termed as 'C'.

8. I have considered this matter carefully.

9. It is well settled that entries in the ACT should be based on established facts and not on mere suspicion. The Asstt. Commissioner of Police in his note dated 4.1.1994, while examining the representation against the adverse remarks filed by the applicant had commented that the ACR was recorded after the punishing authority had awarded the punishment of dismissal, but before the dismissal was set aside by the Additional Commissioner. He had recommended that as the Additional Commissioner had set aside the order of dismissal, the cause of the adverse remarks themselves had ceased to exist, and, therefore, the entire adverse remarks were fit to be expunged and the applicant's ACR graded as satisfactory, but this recommendation was accepted only partially by the Addl. Commissioner of Police.

I have been through the previous ACRs of the applicant, as well as the relevant files produced for my inspection by the respondents. None of the previous or subsequent entries in respect of the applicant cast any doubts upon his reliability or integrity.

In fact for the period 1.4.92 to 18.11.92, immediately preceding the period for which the adverse remarks were recorded, against column 14 for reliability, the applicant is stated to be 'reliable'; against column 16 for over all assessment, the applicant's work and conduct has been stated to be 'satisfactory/average', and his over all grading was to be as 'average (B)'. Then again for the subsequent year 1993-94, the applicant was under suspension from 2.4.1993 to 9.12.1993, but for the period 10.12.1993 to 31.3.1994 he is stated to be 'reliable', his work has been categorised as 'very good', and his grading has also been 'very good (A)'.

10. The respondents have also failed to produce any material to establish that the applicant's reliability and integrity were in fact doubtful, which leads to the resistible conclusion that these adverse remarks were recorded solely on the basis of the charges in the departmental proceedings against the applicant, which, as stated above, were not proved against him. As those charges of asking for and accepting a bribe were not proved against the applicant, the benefit of the same has to be given to the applicant. The adverse remarks about the applicant's integrity and reliability cannot be justified, merely on the ground

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that there was some evidence of wrong doing on his part in the preliminary enquiry, and the applicant was let-off in the departmental enquiry only on technical grounds.

11. Under the circumstances, this application succeeds and is allowed. The respondents are directed to expunge the adverse remarks in columns 14 and 16 of the applicant's ACR ^{for the relevant period} and thereafter consider revising the applicant's over all grading in column 19 of the ACR. These directions should be implemented within three months from the date of receipt of a copy of this judgment. No costs.

S. R. Adige
(S. R. Adige)
Member (A)

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