

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A./T.A. No. 68 of 1994 Decided on: 31-1-1996

Vijender SinghApplicant(s)

(By Shri N. Safaya Advocate)

Versus

Lt. Governor & OthersRespondent(s)

(By Shri B.S. Oberoi, proxy counsel Advocate)
for Shri Anoop Bagai, Counsel

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI P. SURIYAPRAKASAM, MEMBER (J)

1. Whether to be referred to the Reporter or not? 95
2. Whether to be circulated to the other Benches of the Tribunal? 10


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.68 of 1994

New Delhi this the 31st day of January, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. P. SURIYAPRAKASAM, MEMBER (A)

Constable Driver Vijender Singh
No.4234/P.C.R.
s/o Shri Kanta Prasad
R/o Village Jia Sarai,
House No.7-A, New Delhi.

...Applicant

By Advocate Shri N. Safaya

Versus

1. Lt. Governor, Delhi,
Raj Niwas,
Rajpur Road,
Delhi.
2. Commissioner of Police,
Police Headquarters,
New Delhi.
3. Additional Commissioner of Police (Ops.),
Police Headquarters,
New Delhi.
4. Deputy Commissioner of Police,
Police Control Room,
I.P. Estate,
New Delhi.

...Respondents

By proxy counsel Shri B.S. Oberoi for Shri
Anoop Bagai, Counsel for the respondents.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant was Constable in the Delhi Police. A departmental enquiry was ordered against him on the charge that being a member of the disciplined force, he failed to inform the department about his involvement in a criminal

case registered against him under Sections 147, 148, 149, 427, 323 and also 308/302 of the IPC and had also not informed the department about his arrest and detention. On the basis of the departmental enquiry, the charge was held to be proved. On the basis of the findings of the Enquiry Officer, the applicant was dismissed from force. The appeal against this order was rejected. Aggrieved by this, the applicant has filed this application with a prayer that the order of dismissal and the appellate orders rejecting his appeal should be quashed.

2. From the averments made in the application, the fact of his arrest and detention in judicial custody has not been denied. The applicant maintains that he was not arrested by the police but he himself surrendered to the police when he came to know that he was wanted by the Police. The applicant also contends that he had in fact informed the I.O. concerned Shri O.D. Yadav, S.I. of the Police Station Haus Khas, New Delhi that the fact of his arrest might be conveyed to the superior officers at Police Control Room and thereafter, in the judicial custody, he was not in a position to inform the respondents and as he had already requested the I.O. to inform the superior officers, the question of further informing the Department was not found to be relevant by him. The applicant has challenged the impugned orders on various grounds, which are briefly as follows:-

(1) The respondents held the departmental proceedings in jail itself and the applicant was

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not given reasonable opportunity to defend himself.

(ii) The departmental enquiry could not be held without the permission of the concerned Magistrate in whose judicial custody he was placed.

(iii) He had requested the Enquiry Officer that he can defend himself only when he could be released but the Enquiry Officer had ignored this and rushed through the proceedings.

(iv) As he was in jail, he could not respond to the letter dated 16.11.1992 directing him to appear before the respondents and such appearance had to be permitted by the competent court.

(v) The Enquiry Officer as well as the other concerned had under played the fact of his being in jail and the enquiry had been held in jail and no mention of this had been made in the findings of the Enquiry Officer.

(vi) No legal assistance was provided to him for defending himself.

(vii) The appellate authority had also mechanically dismissed his appeal without applying his mind and without taking into account the fact that the applicant had sufficient cause for not being able to appeal within time as he was in judicial custody and that he could not appear before the authority due to this reason.

(viii) The punishment of dismissal is harsh and disproportionate to the misconduct if any and in terms of the Delhi Police (Punishment & Appeal) Rules, 1980, punishment of dismissal can be awarded only for grave misconduct rendering the

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applicant unfit for the police service.

3. The respondents have contested the averments in the application and the grounds adduced in the application. The applicant was proceeded against only when it was known that the applicant did not inform the department about the incident in which he was involved or about the arrest and that he had concealed the facts. When the departmental enquiry was initiated and he was served with the summary of allegations, he did not plead guilty and when a copy of the Enquiry Officer's report was supplied to him, he did not submit any reply despite repeated directions and he also did not appear before the authority, as directed. Every opportunity to defend himself was offered to the applicant but he did not avail himself of the same and even did not submit his representation in response to the findings. As there was no other alternative, the disciplinary proceedings were concluded and he was dismissed from the force. The respondents also contend that the applicant was detailed for duty at the PCR Van but he did not turn up for duty and was marked absent on 22.6.1991 and no intimation was received from him and the applicant had enough time and opportunity to inform his seniors about his involvement and arrest but had deliberately concealed the facts, which constituted a grave misconduct and he had failed to maintain absolute integrity. The respondents have further averred that the Enquiry Officer had himself gone to the applicant and guided him all about his rights.

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Sufficient time was available to submit his representation to the concerned authorities to appear before the respondents as it was in his interest to defend himself. He neither appeared before the respondents nor had sent any information to the reply regarding the findings of the Enquiry Officer. In the light of this, the respondents contend that there was no violation of the principles of natural justice as the departmental enquiry was conducted according to the rules and procedure and the action taken against him was justified and the punishment was also well assessed and the punishment was made only after the charge had been proved.

4. The learned counsel for the applicant argued strenuously that the mere act of not informing about the arrest did not constitute a grave misconduct meriting dismissal. Further, the learned counsel argued that the applicant was not given any opportunity to defend himself and the respondents had conducted the disciplinary enquiry in the jail itself without any proper authority. Further, the learned counsel referred to the impugned order which stated that the defaulter did not inform the Department about his unlawful act and being a member of the disciplined force, it was his duty but he did not do so and concealed the facts. The learned counsel argued that the charge as drafted cannot be understood, by a constable-driver, who is not well educated, to mean that the charge was not on account of the alleged unlawful act but on account of

non-communication of his arrest. The learned counsel for the respondents argued on the pleadings given in the counter-reply.

5. We have heard the learned counsel for the parties and have perused the records.

6. From the application, it is evident that the facts of the applicant's arrest is not in dispute. The summary of allegations points out that the applicant did not inform the Department about the facts of the incident on 18.6.1991 and his arrest on 22.6.1991. There is no ambiguity in the summary of allegations against him. In regard to the contention of the applicant that he had informed the Investigating Officer of the Hauz Khas Police Station that the fact of his arrest might be conveyed to the Police Station at Control Room, had been denied by the respondents. From the findings of the Enquiry Officer it is seen that the concerned Investigating Officer(I.O.) had deposed that the applicant alongwith his family members had surrendered in the Court of Shri J.P.S. Malik and as such, he was arrested and an FIR was filed against him and from interrogation, the accused, namely, the applicant had told him that he was a constable in the PCR. He further deposed that he(I.O.) had sent a report regarding the arrest and a letter was also sent on 20.08.91 by ACP (Headquarters) to the DEputy Commissioner of Police (PCR). There is no admission on the part of the Investigating Officer in the evidence that the applicant had requested him to inform his superior officers about his

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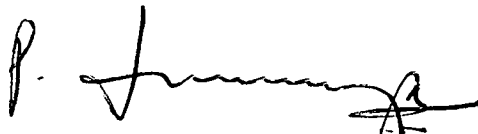
arrest. In the rejoinder, the applicant had not specifically contested the denial of the respondents to the averments in para 4.6 of the application. From the findings of the Enquiry Officer, it is seen that the applicant had not produced any defence witnesses and that he had declined to give written statement in his defence. The applicant questions the conduct of the departmental proceedings in jail but is unable to show how such departmental proceedings or enquiry conducted in jail is against any provisions of law. The facility of communication between the applicant in custody and the respondents, either for purposes of submitting written statement of defence or for a written request for engaging a defence assistant for the applicant, cannot be said to have been precluded by any provisions of the Jail Manual also. In any case, the applicant has not shown how he was legally precluded by any provisions of law against participating in a departmental enquiry in the jail or making such communication for arranging for his defence in the enquiry. There is no averment in the application that he has made a written request for engaging a defence assistant or any other facility for defending himself which has been specifically denied by the Enquiry Officer or the respondents. He has also not made any averment that he had sought the permission of the jail authorities for permitting him to appear before the respondents when he was specifically directed to do so and that the jail authorities had not permitted him.


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In the light of this, it is difficult to accept the contention of the applicant that he was denied opportunities for defending himself.

7. On the contention of the applicant that the punishment was harsh and disproportionate to the alleged misconduct, the Courts and Tribunals cannot examine the correctness of the findings and the decision in the departmental proceedings. This is a well settled law (Union of India VS. P. Upendra Singh, JT 1993(1) page 658 and H.B. Gandhi, Excise and Taxation Officer V. Gopinath and Others, 1992 Supplementary 1(2) SCC 312). The involvement of the applicant in the incident on 18.6.1991 and arrest on 22.6.1991 was considered by the respondents to be sufficiently of a serious nature for the applicant to inform the respondents well in time on his own initiative as a disciplined member of the police force and his failure to do so was considered a serious misconduct and it would not be appropriate for the Tribunal to interfere with this conclusion of the respondents.

8. In the light of the foregoing discussion, we are of the considered view that there is no ground to interfere with the impugned orders of punishment and the application is accordingly dismissed. In the circumstances, there shall be no order as to costs.


(P. SURIYAPRAKASAM)
MEMBER (J)


(K. MUTHUKUMAR)
MEMBER (A)

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