

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A.No. 792/1994

(1)

New Delhi this the 20th Day of July 1999

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

Head Constable Chander Kishore  
(No. 154 PCR),  
A-11, P.S. Saraswati Vihar,  
New Delhi - 110 034.

Applicant

(By Advocate: Shri R.L. Sethi)

Versus

1. Union of India, through  
The Commissioner of Police,  
Police Headquarters,  
Indraprastha Estate,  
New Delhi - 110 002.
2. The Deputy Commissioner of  
Police,  
Police Control Room,  
Delhi.

Respondents

(By Advocate: Shri S.K. Gupta, proxy  
counsel for Shri Jog Singh)

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Shri R.L. Sethi, learned counsel  
for the applicant and Shri S.K. Gupta, proxy counsel  
for Shri Jog Singh for the respondents.

2. The applicant, a Head Constable in the Delhi  
Police is aggrieved by the orders of the disciplinary  
authority dated 26.3.93 as at Annexure A-1 which  
demoted him to the level of Constable for a period  
of two years. An appeal was filed and the appellate  
authority had reduced the penalty of reduction in rank  
from two years to one year as at Annexure A-2.

3. The applicant was served with the following charge:

"I, Durga Prasad, ACP/PCR charge you H.C. Chander Kishore No. 154/PCR, I/C. Van R-85 that on 24.9.92 when your van was deployed for duty around Holumbi Mor, an information was received in the Police Control Room at 20.36 hours from one Dinesh Kumar that some persons in Police Uniform have intruded in Tyagi Farm near Holumbi Mor who were threatening to shoot. This message was passed to you by R-01 and on this you alongwith your Staff reached the spot and flashed the message from there that the situation was tense and you alongwith your staff and the staff of Local Police have been detained in Tyagi Farm, but you failed to challenge Mohinder Singh Tyagi and his associates who forcibly detained the police personals in his farm though you and your staff were armed with revolver and S.A.F and thus showed cowardice while performing your official duties as I/C Van V-85. you did not show any resistance also and became puppets in the hands of Mohinder Tyagi.

The above act of you, H.C. Chander Kishore No. 154/PCR amounts to gross misconduct cowardness and dereliction in the discharge of your official duties which render you liable for a departmental action u/s 21 Delhi Police Act, 1978."

A detailed enquiry was held and number of prosecution witnesses and defense witnesses were examined and the enquiry officer submitted his report and a reply was given thereafter. After considering all the relevant documents, the disciplinary authority passed the impugned order dated 26.3.93 where he had brought out that the applicant who was in charge of the PC even though he was armed had submitted himself to the illegal detention by a publicman and that there was no evidence of any physical intimidation, or

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trying to capture arms of the police officials. He also brought out that the PCR staff was seen freely moving within the boundary of Farm House. The appellate authority had agreed with the reasoning of the disciplinary authority but however taking note of the fact that the applicant had put in number of years of service and promoted as Head Constable after more than 16 years of service had reduced penalty of reduction in rank from two years to one year.

4. Shri Sheth for the applicant submits that the enquiry was not conducted in accordance with the relevant statutory rules. He also states that certain documents sought for by the applicant <sup>had</sup> been made available to him at the end of the disciplinary proceedings. He refers in this connection to para 12 of his appeal dated 6.5.93 as at Annexure A-E where he had stated that he was not supplied with some documents till the end of disciplinary enquiry proceedings and that he did not have opportunity for making proper cross examination and this amounted to gross violation of natural justice. Shri Sethi also goes on to submit that while the applicant was armed it is not as if he should straight away take recourse to fire arms as it might have aggravated the situation. He had assessed the requirement and had also ~~promptly~~ communicated the position to the higher authorities through a message and this he had done so at his discretion which cannot be faulted. He says that the appellate authority also had not gone into the contention raised requiring non-supply of documents.

5. Shri S.K. Gupta, learned proxy counsel for the respondents resists the OA. He says that the

disciplinary authority and the appellate authority had acted on the basis of the enquiry report and the enquiry officer had carefully analysed the evidence both of the prosecution and defence witnesses and the relevant rules and procedure and there has been no violation of principle of natural justice. He denies the contention that the essential documents were not supplied to the applicant. He submits that this is not a fit case for the Tribunal to interfere.

6. We have carefully considered the rival contentions and have also gone through the materials on record. As regards the submission that the relevant documents were not furnished to him till the end of the disciplinary proceedings, there is no doubt a reference in para 5.10 of the pleadings which reads as follows:

"Because the Inquiry Officer failed to follow the mandatory Guidelines prescribed by the Police Headquarters, particularly with regard to the supply of attested copies of relevant essential documents."

It does not bring out what were the documents which the applicant wanted copies of which were not supplied to him and what was such non-supply of documents had caused prejudice to him. This contention has been denied by the respondents in the reply statement who have argued that the enquiry officer strictly adhered to the rules. A vague allegation has been made by a general denial. We also notice that while the applicant has referred to non-supply of the documents in the appeal and referred to Annexure J he has not brought out the nature of such documents nor has he had made any plea at any time prior to the appeal. For example, after the enquiry officer gave his report

a showcause notice was given to him. We have not been shown any contention raised by the applicant in response to the showcause notice that he had not been given certain specific documents asked for by him and which were essential to him. We, therefore, hold that this contention ~~regarding~~ <sup>regularly</sup> non-supply of documents is without any merit.

7. As has been brought out by the counsel for the respondents the disciplinary authority has gone on the basis of the evidence which was recorded during the course of enquiry proceedings where the applicant was fully associated. He had come to the conclusion that in the absence of any evidence of physical intimidation or assault or trying to capture arms of the police official, the applicant who was armed should have exhibited greater resource in dealing with the situation instead of merely sending a message. As regards Shri Sethi's contention that he acted at his discretion it is not for us to substitute our judgment to that of the disciplinary authority. We find that the disciplinary authority has carefully considered the enquiry report and also the evidence which was recorded therein and came to the finding that the inaction of the applicant in the situation amounted to cowardice. The finding has been upheld by the appellate authority. We hold that such a finding is based on some evidence and cannot in any way be regarded as perverse.

8. There is a contention that the appellate authority had not given a speaking order; particularly he had not met the contention in para 12 of the appeal that certain documents were not given to the applicant which had prejudiced his defence. We find

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from the appellate authority's order that it is a speaking order and he had come to the finding that the action of the applicant in only sending a message instead of taking any other steps and allowing himself to be forceably detained amounted to misconduct. He has no doubt not specifically gone into the question of non-supply of documents but the appeal itself does not spell out details of the documents and the manner in which the non-supply of the same had caused prejudice. We hold that the failure to refer to the same in the appellate order is not very material. In any case we note that the appellate authority has reduced the penalty from two years to one year.

9. In the facts and circumstances of the case, we hold that this is not a fit case for the Tribunal to interfere in its exercise <sup>of power</sup> of judicial review. The OA is accordingly dismissed. No order as to costs.

Lakshmi

(Mrs. Lakshmi Swaminathan)

Member (J)

Ramakrishnan

(V. Ramakrishnan)

Vice Chairman (A)

vtc.