

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA.No.923 of 1994

(5)

New Delhi, this 16th day of July, 1999

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN(J)
HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. Ex-Constable Suresh Kumar, No.4903/DAP
Delhi Police.
2. Ex-Constable Jai Kishan, No.6707/DAP
Delhi Police. ... Applicants

C/o: Mrs Avnish Ahlawat, Advocate
243, Lawyers' Chambers
Delhi High Court
New Delhi.

By Advocate: Mrs Avnish Ahlawat

versus

1. Government of National Capital
Territory of Delhi, through
Commissioner of Police, Delhi
Police Headquarters
M.S.O. Building, I.P. Estate
New Delhi-110002.
2. Shri R.P. Singh
Additional Commissioner of Police(S&T)
Delhi Police
Police Headquarters
M.S.O. Building
I.P. Estate
New Delhi-110002.
3. Deputy Commissioner of Police(Security)
Delhi Police
Delhi.
4. Inspector Rampat Singh, Enquiry Officer
E-Block, Security Lines
Delhi Police
Delhi. ... Respondents

By Advocate: Shri Surat Singh

Contd..2

M

ORDER (Oral)

(6)

Hon'ble Shri A.V. Haridasan, VC(J)

The applicants, Ex-Constables Suresh Kumar and Jai Kishan of Delhi Police were posted in 'E' Block Security Lines and they were deployed on duty at the residence of Shri I.K.Gujral (protected person) at G-13 Maharani Bagh, New Delhi on 15.2.91. The applicants were served with summary of allegations which reads as follows:

"It is alleged that you Const. Jai Kishan No.11975/DAP while posted in 'E' Block Security Police Lines, you were deployed on duty at the residence of Shri I.K. Gujral (PP) at G-13, Maharani Bagh, New Delhi. On 15.2.91 you mutually exchanged your duty without permission/intimation of senior/competent authority. It is also alleged to you that at about 1.30 P.M. on 15.2.91 you went inside the residence when the P.P. was not present. You entered the bed room of Shri Naresh Gujral the son of Shri I. K. Gujral and thereafter entered the bed room of infant daughter of Shri Naresh Gujral where maid servant Miss Urmil was present inside who was making the child to sleep. On seeing you Miss Urmil asked you the reasons of your presence and further asked to go outside. Miss Urmil brought the facts to the notice of Male servant Mr. Hari who was present in the kitchen. Mr. Hari then went to terrace and brought you outside the residence.

Contd..3

(A)

The above act on the part of you constable, amounts to gross negligence, careless and indisciplined/rendering you liable for unbecoming of a Govt. servant under rule 3(1)(iii) of CCS(Conduct) rules 1964 and liable to be dealt with departmentally action u/s 21 of Delhi Police Act, 1978."

"I, Inspector Ram Pat Singh of Security Unit, charge you Ct. Suresh Kumar No.14903/DAP Now 1539/DAP while posted in 'E' Block Security Police Line, you were deployed on duty at the residence of Sh. I.K. Gujral, P.P. at G-13, Maharani Bagh, New Delhi. On 11.2.91 you mutually exchanged your duty without permission/intimation of senior/competent authority. It is also alleged on you that at about 1.30 P.M. on 15.2.91 you went inside the residence when the PP was not present. You entered the bed room of Shri Naresh Gujral the son of Sh. I.K. Gujral and thereafter entered the bedroom of infant daughter of Shri Naresh Gujral where female servant Miss Urmil asked you reason of your presence and further asked to go out side. Mrs Urmil brought the facts to the notice male servant Mr. Hari who was present in the kitchen. Mr. Hari then went to terrace and brought you outside the residence.

W

The above action on the part of you amounts to gross negligence, carelessness and indisciplined & rendering you liable for unbecoming of a Govt. servant under rule 3(1)(iii) of CCS(Conduct) rules 1964 and liable to be dealt with departmentally action u/s 21 of Delhi Police Act, 1978."

The applicants denied the allegations against them. An enquiry was held and the Enquiry Officer reached a finding of guilt. This finding was accepted by 3rd respondent and he by order dated 24.5.93 (Annexure-B) imposed on the applicants the penalty of removal from service with immediate effect. Appeal filed by the applicants against that order was rejected by the Additional Commissioner of Police (Security) by order dated 1.10.93 (Annexure-C). The applicants assail the order of the disciplinary authority on the ground that there is absolutely no basis for a finding that they were guilty and, therefore, the penalty imposed is legally not sustainable. It is alleged in the application that the applicant Suresh Kumar did not change his duty with his co-Constable Jai Kishan and that both of them entered the house only to deliver the Dak to the members of the family if available and if not to place it on the table. The finding that they were guilty and the punishment awarded to them are arbitrary and liable to be set aside, contend the applicants.

(9)

The respondents have filed their reply statement contesting the averments made by the applicants.

We have perused the pleadings in this case and have heard the learned counsel. The summary of allegations as also the charge that the applicants changed duty has not been established because P.W.1, Shri S.K. Ahuja, Inspector has, in his statement, stated that there was no change of duty and he mentioned in the report that it was a clerical error and that the applicants entered the house is not disputed. Inspector Ahuja was not an eye witness. P.W.3, Miss Urmila (female servant) and P.W.4, Mr Harilal (male servant) are the witnesses of the occurrence. ~~evidence~~ These two witnesses have not mentioned that the applicants did anything which is objectionable apart from entering in the house (Kothi) nor did they give any statement in writing. The Enquiry Officer was well aware of the feeble nature of evidence and he has stated as follows:

"While Miss Urmila infant servant has clearly stated that the constable entered the Kothi at noon while she was making the child

A

(10)

asleep. However, Harilal male servant has not corroborated the statement of Miss Urmila. He has simply stated that the constables were found standing at the place where dak was placed."

To come to a finding that the applicants are guilty, the Enquiry Officer has added as follows:

"The enquiry conducted by Shri S.K. Ahuja Inspector and his statement recorded during the D.E. proceedings proves that both the constables have entered in the bedroom of the Kothi. Hence the charge framed against Ct. Suresh Kumar No.4903/DAP and Ct. Jai Kishan No.11975/DAP has been proved beyond any doubt."

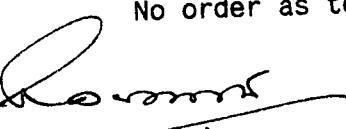
Inspector Ahuja was not an eye witness and his information is based on what Urmila and Harilal had told him. The Enquiry Officer has placed reliance on preliminary enquiry alleged to have been held by Inspector Ahuja which was behind the back of the applicants. We find that no misconduct has been alleged and proved. Even if entering into the room without permission of a protected person is deemed to be a misconduct there is no evidence on the basis of which such a conclusion can be drawn.

~

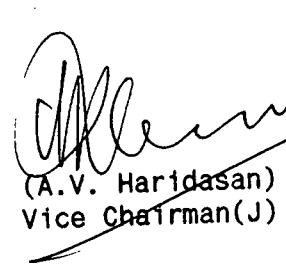
11

We find that the impugned order of penalty as also appellate order are not sustainable and have to be set aside. We, therefore, set aside the impugned orders and direct the respondents to reinstate the applicants in service with all consequential benefits including back wages within a period of two months from the date of receipt of a copy of this order.

No order as to costs.



(S.P. Biswas)
Member(A)



(A.V. Haridasan)
Vice Chairman(J)

dbc