

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 944/94

T.A. No.

199

(A)

DATE OF DECISION 19-7-99

Constable Allauddin

....Petitioner

None for the applicant

....Advocate for the  
Petitioner(s)

VERSUS

UOI through the Addl.  
Addl. Commissioner of Police  
and Ors. ....Respondent

Sh. Surat Singh

....Advocate for the  
Respondents.

CORAM

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

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

OA 944/94

(5)

New Delhi this the 19th day of July, 1999

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

Constable Aliuddin  
No. 1332/N-7 7491/DAP,  
VI Bn., Delhi Police  
resident of New Police Lines,  
K W Camp, New Delhi

.. Applicant

(None for the applicant)

Versus

1. Union of India through the  
Additional Commissioner of Police,  
Northern Range, Police Headquarters,  
I.P. Bhawan, New Delhi.

2. The Additional Deputy Commissioner of  
Police, North District, Civil Lines,  
Delhi.

.. Respondents

(By Advocate Shri Surat Singh )

O R D E R (ORAL)

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

This is a 1994 case and although the case had been called out twice, none had appeared for the applicant. We have heard Shri Surat Singh, learned counsel and also perused the records.

2. The applicant is aggrieved by the order of punishment passed by the disciplinary authority dated 27.3.92 punishing him with forfeiture of 5 years approved service permanently for a period of 5 years entailing reduction in his pay proportionately in <sup>the</sup> time scale of pay, during which time he would not earn any increment. An appeal filed by the applicant against this order has been modified by the appellate authority by its order dated 20.7.93 reducing the forfeiture of 5 years approved service permanently for a period of three years.

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3. The above punishment orders have been passed against the applicant after holding a departmental enquiry against him under Section 21 of the Delhi Police Act, 1978 and the relevant rules. The relevant charges levelled against the applicant read as follows:-

o I, Prem Soni, Insp. I/C Crime W/Cell, North Distt., charge you Const. Allauddin, No. 1332/N that you while posted in North Distt. Line went in the office of DCP/North (SIP Branch) on 15.4.91 in connection with sanctioned of Earned Leave on the ground of illness of his wife. You threatened Sr. Vidhya Dutt of SIP Branch, North District that in case his leave application for 30 days was not granted you would be produced before the Imam Abdullah Bukhari.

The above said Act amounts to gross misconduct indiscipline and unbecoming of a Police Officer. Which render you liable for departmental action U/S 21 of the Delhi Police Act., 1978."

4. Four prosecution witnesses have been examined during the enquiry and the Inquiry Officer in his report dated 3.1.92 has stated that the witnesses have fully supported the incident and according to him the exact date was mentioned to which the applicant had not given any reply. He has also stated that in the defence statement, the defaulter has contended that he did not even go to the DCP North Office on 17.4.91 or 18.4.91 and hence the question of giving threats on 17.4.91 does not arise. In the statement given by the PW 4, SI Anil Kumar (page 37 of the paper book), it is stated that the defaulter had produced an application on 16.4.91 and DCP/North had ordered 1+1 leave and accordingly he had written the leave order on the application and marked the same to RI/North/ASIP/OB.

5. The applicant has taken a number of grounds in assailing the punishment orders. According to him he had not committed any misconduct at all. He has stated that in the order dated 3.5.91 ordering the disciplinary enquiry, the date of misconduct

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has been given as 17.4.91 but in the charge sheet dated 5.2.91, the date of misconduct has been altered by overwriting from 17.4.91 to 15.4.91. He has also pointed out that the disciplinary authority in his punishment order dated 27.3.92 has not mentioned the date of commission of mis-conduct. He has stated that he had proceeded <sup>on 15/</sup> two days duly sanctioned casual leave from 16.4.91 which also appears to be corroborated by the statement of PW 4, SI Anil Kumar, in the departmental proceedings. Another ground taken by the applicant is that SI Vidya Dutt, PW 2, who had given written statement about the threat allegedly given to him had not produced written complaint stated to have been addressed to the Addl. Deputy Commissioner of Police. According to the applicant, if they had produced the same during departmental enquiry the date of alleged mis-conduct would have been clarified beyond doubt. He has also submitted that non production of this relevant document has resulted in miscarriage of justice in so far <sup>as 15/</sup> he is concerned. He has also emphatically denied that he had threatened ~~to~~ the complainant, Sh. Vidya Dutt, SI, PW 2.

6. In the reply filed by the respondents, they have controverted the above facts. According to them, they have conducted the disciplinary proceedings in accordance with the relevant rules and there is no infirmity. They have also stated that the threat held out to the SIP by the applicant was totally unbecoming of a member of a disciplined force <sup>According to them</sup> by holding out threat of going to the Imam, if he was not allowed to avail leave, as he has tried to inject religious/communal tones into an official matter which in itself is of great concern, particularly in a disciplined force. They have tried to justify ~~the~~ passing of the punishment orders issued by the disciplinary authority as well as the appellate authority. Revision petition submitted by the applicant has also not been entertained as there was no provision of revision

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in Delhi Police (Punishment and Appeal) Rules at the relevant time. In the reply they have stated that the written statement of the then SIP(North) is on record and all the relevant documents were given to the applicant. However, the reply is vague regarding the request of the applicant for supplying the written complaint of SIP(N) to him.

7. In the rejoinder filed by the applicant he has reiterated his averments in the OA, including the discrepancy in the date of the alleged mis-conduct i.e. whether it was 15.4.91 or 17.4.91. He has stated that initially it was stated that the petitioner visited the office on 17.4.91 but when they came to know that the petitioner was on casual leave for two days on 16.4.91 and 17.4.91, the SIP changed his version and due to this reason, the date of the charge was altered from 17.4.91 to 15.4.91. According to him, when the disciplinary enquiry passed his order, 17.4.91 was the date of the alleged mis-conduct as told to him which was the wrong date as he was on casual leave on that day. He has also reiterated his averments in para 5(V) stating that the respondents have themselves admitted that there is a written complaint of the SIP on record which has not been given to him or exhibited during the statement of PW 2 SIP. He has submitted that had the copy of the complaint been provided to him, he would have effectively cross examined PW 2 SIP on the point, particularly of the date of mis-conduct.

8. We have carefully considered the pleading, documents on record and the submissions of the learned counsel for the respondents.

9. The allegation made by the applicant that there is overwriting in the charge-sheet dated 5.12.91 is borne out by perusal of the copy of the charge sheet itself where in the 4th line, the date which originally appears to be 17.4.91 has been

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overwritten to show 15.4.91.<sup>8.</sup> The date of the alleged mis-conduct assumes importance when it is read with the relevant facts that the applicant was apparently on sanctioned casual leave for 2 days i.e. 16.4.91 and 17.4.91 as testified by PW 4, Anil Kumar in the disciplinary proceedings. It is also relevant to note that in the punishment order passed by the disciplinary authority the date of commission of the misconduct is not at all mentioned, except stating, <sup>that 18.</sup> an incident of threat was held out by the defaulter constable to the SIP which was totally unbecoming of a member of a disciplined force. From the documents on record, we find force in the submission of the applicant that the respondents have not mentioned the date of commission of the misconduct correctly and have altered the same even in the charge sheet from 17.4.91 to 15.4.91. We also find force in the contention of the applicant that in spite of the fact that the respondents themselves have stated that a written complaint was given by SI Vidya Dutt, PW 2 which is on record, a copy of the same had not been given to the applicant. In the facts and circumstances of the case this document is a relevant document and merely stating that it is on record is not sufficient. We are of the view that non-supply of this document has caused prejudice to the applicant. It is also relevant to note that he is stated to have threatened the SIP on 17.4.91 but according to the applicant he was already on two days duly sanctioned casual leave for 16.4.91 and 17.4.91. Therefore, the contention of the respondents that the applicant had tried to threaten an officer based on religious sentiments does not appear to be borne out by the documents on record.

10. There is yet another reason why the punishment orders are not sustainable. There are apparent discrepancies in the allegations as given in the charge-sheet, namely, that the

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applicant had threatened SI Vidya Dutt of SIP Branch that in case his leave application for thirty days is not granted, he would produce him before the Imam Abdullah Bukhari and what has been stated in the disciplinary inquiry is that this witness has stated that the applicant had stated that in case he was not permitted to meet the Saheb today itself because he had to celebrate Id.festival the next day, he will take him to the Imam. In other words, in the charge-sheet it is stated that the applicant threatened SI Vidya Dutt of SIP Branch that in case his leave was not granted, and on the other hand in the disciplinary proceedings PW 2 has stated that the applicant had stated that if he did not permit him to see the Saheb today itself, he would produce him before Imam Abdullah Bukhari, which, therefore, shows the contradictions.

11. For the reasons given above we find merit in the averments made by the applicant in the OA that there is no evidence of the charge having been proved or any mis-conduct on his part, as alleged in the charge-sheet dated 5.12.91. We are aware of the powers to be exercised by the Tribunal under judicial review as expressed in a catena of judgements of the Supreme Court (See for example UOI Vs. Permananda (AIR 1989 SC 1185), UOI Vs. Upendra Singh (JT 1994(1)SC 568) and State of Tamil Nadu Vs. A. Rajapandian (AIR 1995 SC 651). However, as per the discussion above, it is clear that there was no evidence of mis-conduct on the alleged charge against the applicant on which the disciplinary proceedings could have been held.

12. In the facts and circumstances of the case the OA succeeds and is allowed. The impugned punishment orders of the disciplinary authority dated 27.3.92 as well as the appellate authority's order

dated 20.7.93 are quashed and set aside. Respondents are directed to give the consequential benefits to the applicant within two months from the date of receipt of a copy of this order. No order as to costs.

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

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

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