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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 1474 of 1994

New Delhi this the 25th day of July, 1994

Mr. Justice S.K. Dhaon, Acting Chairman
Mr. B.N. Dhoundiyal, Member

Shr Mahabir Singh
R/o Village Dhamlaka P.O. Chhuria Bas,
District Rewari - Haryana.Applicant

By Advocate Shri Shanker Raju

Versus

1. The Lt. Governor of N.C.T.D.
through Commissioner of Police,
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. Additional Commissioner of Police
(Operations),
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.Respondents

ORDER

Mr. Justice S.K. Dhaon, Acting Chairman

The applicant, a Sub-Inspector in the Delhi Police was subjected to disciplinary proceedings along with an Inspector J.S. Ahluwalia. The usual procedure was followed. A summary of allegations was given to him. After recording the evidence of the aforementioned witnesses, a charge was framed as is the requirement of the Delhi Police Act, 1978(hereinafter referred to as the Act) and the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as the Rules). An Enquiry Officer was appointed, who submitted his report to the disciplinary authority. The disciplinary authority furnished a copy of the Enquiry Officer's report and gave an opportunity to the applicant to give his explanation.

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2. The disciplinary authority on 5.3.1991 passed an order removing the applicant from service and on 18.05.1994, the Commissioner of Police acting as the appellate authority dismissed the appeal of the applicant. The two orders are being impugned in the present application.

3. The contents of the summary of allegations and the contents of the charges framed were substantially the same. We are, therefore, extracting the summary of allegations:-

" It is alleged against Inspector J.S. Ahluwalia No.D-781 and SI Mahabir Singh No.D-2289 that on 10.01.1989 while posted at P.S. Shalimar Bagh, on receipt of an information vide DD entry No.10-A dated 10.01.1989 P.S. Shalimar Bagh, regarding blackmarketing of wheat in a truck from F.P.S. Shop No.7034, Shalimar Bagh, SI Mahabir Singh went to the spot. The truck No.DBI-4224 driven by driver Krishan Kumar was apprehended just outside Shalimar Bagh by a PCR Van which contained about 50 bags of wheat. SI Mahabir Singh brought the truck to P.S. Shalimar Bagh which remained there throughout the day. Shri R.K. Jain and Shri Vijay Bhardwaj, Inspectors Food and Supplies reached for enquiry on receipt of complaint No.31 dated 10.01.1989 from SI Shanker Singh of PCR. The two Inspectors found on visual inspection that the bags of wheat bore markings of FPS No.7034. The matter was brought to the notice of SHO Shri J.S. Ahluwalia by the two Inspectors but the SI allowed the truck to go for the reasons best known to him, despite protest from Food and Supplies Inspectors. The attitude of the SHO was also not cooperative who was kept informed of the development by the two Inspectors at every stage of enquiry. The SI also made a false entry vide DD No.33-B dated 10.01.1989 that the truck and case property was handed over to Food and Supplies Inspectors.

The above act on the part of Inspector J.S. Ahluwalia No.D-781 and SI Mahabir Singh No.D-2289 jointly and partly amounts to mischievous, mala fide conduct and dereliction in the discharge of their official duty, rendering them liable for departmental action under Section 21 of the Delhi Police Act, 1978."

4. To the summary of allegations, a list of witnesses and a list of documents were appended. 4 witnesses

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were cited. They were:-

- (1) Shri R.K. Jain, Inspector, Food and Supplies
- (2) Shri Vijay Bhardwaj, Inspector, Food and Supplies
- (3) Shri Shanker Singh, Sub Inspector, PCR
- (4) MHC (R) P.S. Shalimar Bagh

The list also indicated that the first witness was to depose that the truck carrying 50 bags of wheat bearing markings of FPS No.7034 was brought to Police Station Shalimar Bagh by the applicant and allowed to go despite his protest by the SI and SHO. The second witness was to make the same deposition as the first witness. The third witness was to depose that the truck carrying 50 bags of wheat was apprehended by a PCR Van and he informed Food and Supplies control-room. The last witness was to prove the entry in D.D. No.10-A dated 10.01.1989 P.S. Shalimar Bagh and D.D. No.33-B dated 10.01.1989 P.S. Shalimar Bagh.

5. The documents mentioned in the list supplied to the applicant were these:-

- (i) Copy of D.D. No. 10-A dated 10.01.1989 Police Station Shalimar Bagh.
- (ii) Copy of D.D. No. 33-B dated 10.01.1989 P.S. Shalimar Bagh.
- (iii) Copy of the report dated 11.01.1989 submitted by Shri R.K. Jain and Shri Vijay Bhardwaj, Inspectors Enforcement Branch, Food and Supplies.

We may note at this stage that S/Shri R.K. Jain and Vijay Bhardwaj had submitted separate reports though their contents were substantially the same. In the departmental enquiry, the prosecution examined the 4 witnesses, as mentioned in the list. Entries in D.D. No.10-A and 33-B dated 10.01.1989 were duly proved. The reports given by S/Shri R.K. Jain and Vijay Bhardwaj on 11.01.1989 had also been proved. These witnesses while in the witness box stated that their reports may

be brought on record and the contents thereof may be treated as part of their depositions.

6. Before the Enquiry Officer, PW-4 SI Piara Lal stated thus: " he was for duty on the PCR Van in the area of Police Station Shalimar Bagh on 10.01.1989 from 8.00 A.M. to 2.00 P.M. A wireless has been received during his duty hours that the wheat and rice meant for black marketing was being loaded in the truck No. DBI 4224 from Shop No. FPS No. 7034 at BK-1/137 A, Shalimar Bagh. He reached the spot along with the Van. The truck had left the place of the shop but was nabbed after a chase. It was discovered that it was loaded with bags of wheat. The truck along with its driver and the labour was handed over to the applicant at P.S. Shalimar Bagh and the information was also given to the Inspector of the PCR and the PCR form had also been filled up on phone. The report had also been sent to the Zonal Office of PCR at Shalimar Bagh." This witness was not cross-examined at all.

7. The applicant examined some witnesses in his defence. DW-1 Shri Inderjit Singh, inter alia, stated that he had come to know later that the applicant had handed over the truck to the Inspectors. DW-2 Dinesh Puri made a statement similar to the applicant made by DW-1 in so far as it related to the handing over of the truck to the Inspectors of Civil Supply. DW-3 Chander Bhan Saini stated that the police handed over the truck to the Inspectors of Food and Supply. DW-4 ASI Attar Singh, however, stated that the applicant had handed over the truck to the Inspectors of Food and Supply. DW-5 Head Constable Rajbir Singh also stated that a truck had been handed over by the applicant to the Food and Supply Inspectors.

8. The Enquiry Officer after considering the testimonies of the prosecution witnesses recorded a finding that the charges had been brought home to the

applicant. He recorded a categorical finding that the applicant wrote a wrong report No.33-B dated 10.01.1989 in the Daily Diary which amounts to grave misconduct on his part. He disbeliefed the testimonies of the defence witnesses.

9. The disciplinary authority in its order observed:-

" Tentatively agreeing with the findings of the E.O., the copy of findings was given to the S.I. vide this Office No.24(556)NW;89;41780-81;Vig./HA-V dated 26.12.1990 to represent against it if he desires. He has submitted his representation on 22.01.1991...."

He has observed that he has gone through the departmental enquiry and the representation received from the applicant. He also observes:-

" Keeping in view the overall facts and circumstances of the case, he orders that the applicant may be removed from service with immediate effect".

The criticism of the learned counsel for the applicant on the order passed by the disciplinary authority is that he failed to apply his mind and even did not care to record a finding that he agreed with the recommendations of the Enquiry Officer. It is true that the order of the disciplinary authority is not happily worded. His approach is rather cavalier. However, it is implicit in his findings that he agrees with the Enquiry Officer.

10. The appellate authority has in our opinion passed a proper order. He observed:-

" The appellant himself had made D.D. entry No.33-B, dated 10.01.1989, P.S. Shalimar Bagh that the truck and the bags of wheat has been handed over to the Inspectors of the F.C.S. Department, but the circumstances and conduct of the appellant clearly proved that the truck, in question, was allowed to go out of the police station at the instance of the appellant and he had lodged a wrong and palpably false report to save himself. The charge was sufficiently proved by the evidence adduced by the PWs during

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the course of the departmental enquiry. The appellant was given full opportunity to produce his defence witnesses and submit his defence statement to disprove the charge. The appellant examined DW-3 and 4 in his defence to prove that he had handed over the consignment and the truck to the officers of F.C.S. Department. The enquiry officer by cogent reasoning had rightly disbelieved their version as well as that of DW-5. Thus the report of the E.O. proving the charge against the S.H.O. and the appellant suffers from no infirmity."

Defect if any in the order of disciplinary authority is cured by the order passed by the appellate authority.

11. The crucial question to be determined by the disciplinary authority as well as the appellate authority was whether the truck came in the custody of the applicant and whether he allowed the same to be driven away with the bags of wheat thereon. There was ample material before the Enquiry Officer to come to the conclusion that the truck in fact had been handed over to the applicant by the PCR Van. The entry in the Daily Diary by the applicant himself goes to show that the truck was in his custody, otherwise the question of its being handed over by him, the applicant to the two Inspectors of Civil Supplies could not have arisen. The Enquiry Officer gave reasons for disbelieving the version of the defence witnesses who had stated that the truck was handed over by the applicant to the two Inspectors of Civil Supplies. The appellate authority by necessary implication rejected the testimonies of the defence witnesses on the said question. It cannot be said that the Enquiry Officer and the appellate authority acted perversely or irrationally or illegally in rejecting the testimonies of the defence witnesses in accepting the version of the two Inspectors. The matter, therefore, falls squarely in the realm of appreciation of evidence. By no stretch of imagination can it be said that the case of the applicant falls under the 'no evidence rule'. We, therefore, repel the contention of the learned counsel for the applicant in this behalf.

12. The legal position is clear. Departmental proceedings are not a trial for a competent criminal court. The provisions of the Evidence Act are not applicable to them. The rule that the guilt must be proved beyond any reasonable doubt is not applicable to such proceedings. Even hearsay evidence is admissible. The Rule of Evidence applicable is preponderance of probabilities. This Tribunal does not sit as a court of appeal. It has no jurisdiction to substitute his own findings after reappraising the evidence. The findings, if based on some evidence, have got to be accepted as correct.

13. We are satisfied, that the findings in the appellate order do not suffer from any infirmity so as to call for an interference by us.

14. Learned counsel for the applicant has urged that the Enquiry Officer acted in violation of Rule 16 of the Rules in bringing on record the reports dated 11.01.1989 of the two Food and Supply Inspectors. We have already stated that the two Inspectors categorically stated that the contents of the two reports filed by them may be treated as part of testimonies. We have already stated that the applicant cross-examined the two Inspectors at length. Therefore, the applicant had every right to cross-examine the two Inspectors even on the version contained in the two documents. Rule 16, in our opinion, does not forbid such a provision to be adopted. Rule 16 merely states that the evidence recorded in a preliminary enquiry can be brought on record in the departmental proceedings, if the witnesses who deposed in the preliminary enquiry are not available for inspection. Surely, the two Inspectors entered the witness box before the Enquiry Officer and apart from making every statement, they proved the contents of their reports dated 11.01.1989. Apart from

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the fact that Rule 16 had not been violated, no prejudice has been caused to the applicant on the procedure adopted by the Enquiry Officer.

15. The next contention is that the Enquiry Officer cross-examined the prosecution witnesses at length. We have read through the deposition of the witnesses and we find that the Enquiry Officer had merely put certain clarificatory questions to the witnesses. Assuming the Enquiry Officer had cross-examined certain witnesses, again in the circumstances of the present case, no prejudice had been caused to the applicant as the fate of the applicant really turns upon the entry made in the Daily Diary by himself that he had handed over the truck to the two Inspectors of Civil Supply.

16. We have already met the argument that the disciplinary authority had not considered the written statement of the applicant on the recommendation of the Enquiry Officer with due application of mind. We have also met the submission of the applicant that the testimonies of the defence witnesses have not been properly appreciated by the Enquiry Officer.

17. The last submission made is that the disciplinary authority while passing the order of removal did not apply its mind to the requirement of Rule 8. Rule 8, in substance, states that the punishment of dismissal or removal should be awarded only where a police officer has committed grave misconduct and on account of that misconduct he has rendered him unfit for being kept in the police force. There is no magic enchantment in the words "grave misconduct" and "unfit for service". The allegations, as contained in the summary of allegations and the charges were in themselves grave.

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The appellate authority observed:-

".....It was indeed a case of blatant misuse of power and an attempt to hood-wink the legal process on the part of the appellant. In the circumstances of the case, the punishment awarded to the appellant is not at all excessive..."

18. The afores^{td} observations of the appellate authority, in our opinion, discloses due application of mind on the requirements of Rule 8. Therefore, the applicant cannot get any advantage on the basis of Rule 8.

19. This O.A. fails and is dismissed summarily.

B.N. Dhoudiyal
(B.N. DHOUDIYAL)
MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
ACTING CHAIRMAN

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