

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.

T.A. No.

1493 of

1994

DATE OF DECISION

14-01-1994

Bhola Nath

Petitioner

Sh. N. Sanyal

Advocate for the Petitioner(s)

Versus

24 Governor Delhi & Ors

Respondent

Sh. Vijay Prakash

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.

Dr. J. S. Verghese VC (J)

The Hon'ble Mr.

M. S. Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGEMENT

(Signature)
(M. S. Member (A))

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1493 of 1994

New Delhi, this the 9th day of January, 1998

Hon'ble Dr. Jose P. Verghese, Vice Chairman(J)
Hon'ble Mr. N. Sahu, Member (Admnv)

(8)

Radha Krishnan Nair, Constable No.
1077/C, Son of Shri Raghavan Pillai
r/o Vill. Koorvparampillveedu, PO.
Pipappencode, Vembayam via, Distt.
Trivendrum, Kerala.

- APPLICANT

(By Advocate - Shri N. Safaya)

Versus

1. Lt. Governor, Delhi, Raj Niwas
Rajpur Road, Delhi.
2. Addl. Commissioner of Police(NR)
Police Headquarters, I.P. Estate,
New Delhi.
3. Addl. Deputy Commissioner of
Police (Central Distt), C/o
Police Headquarters, I.P. Estate
New Delhi.

- RESPONDENTS

(By Advocate - Shri Vijay Pandita)

J U D G M E N T

By Mr. N. Sahu, Member (Admnv) -

Under challenge is an order of dismissal passed by respondent no.3 Addl. Dy. Commissioner of Police (Central Distt), Delhi dated 12.6.1993 which order was later on confirmed by respondent no.2.

2. The admitted facts briefly are as follows - one Mr. Dalip Singh resident of London was travelling on 11.11.1991 along with his family in a taxi. He was allegedly stopped by three police officers near Karol Bagh Police Station at 5 a.m. that day. He was allegedly searched by them. He and his family were allegedly relieved of 700 pounds - 200 pounds each from MR. Dalip Singh and his wife and 150 pounds each from his two children. Mr. Dalip Singh

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complained to the Prime Minister while in India three months after the incident and sent a formal complaint from London subsequently. An enquiry was conducted by the Assistant Commissioner of Police. After correspondence Mr. Dalip Singh could only say that he would be in a position to identify the officers who searched and allegedly extorted money from him and his family members. Coloured photographs of two policemen, namely Head Constable Roop Prakash No. 247/C and Constable Radha Krishnan (applicant) No. 1077/C who were on duty at Link Road Chambry as per the Chitha and Rojnamcha of Police Station Karol Bagh dated 11.11.1991 were sent to Mr. Dalip Singh for identification. The applicant was identified. The matter was a subject matter of a departmental enquiry. The enquiry officer held that the charges levelled against the applicant were proved. The disciplinary authority on consideration of the enquiry report dismissed him from service which was confirmed by the appellate authority.

3. The applicant's main grievance is that this is a case of no evidence. The only piece of evidence relied upon was the identification of the applicant by the family members of Mr. Dalip Singh from London. It is necessary to note that the departmental proceedings were initiated on the basis of a complaint dated 17.2.1992 read with the formal complaint dated 22.6.1992 in respect of an incident of November, 1991. In the departmental proceedings Mr. Dalip Singh was cited as a witness but he was neither examined by the prosecution nor cross-examined by the defence. Even the complaints were not exhibited in accordance with the departmental enquiry rules. The first complaint was made after a period of three months from Delhi itself which the



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complainant should have immediately filed at the next available Police Station. It is stated that the complainant himself had doubts about his own bonafide, namely, the act of changing currency illegally into Indian rupees which was an offence at the relevant time. In his letter dated 22.6.1992 the complainant had clarified that out of the three Police Officers one was a Sikh Officer. As the complaint disclosed commission of a cognizable offence the police was duty bound to register and investigate the case under the Criminal Procedure Code. There was no need only to send two photographs for identification when three pickets were functioning in addition to the traffic picket in Karol Bagh Police Station. The grievance of the applicant is that the department ought to have sent all the photographs of the persons who were on duty at Karol Bagh area at the relevant time. That apart, the applicant on the date of complaint was on duty with Head Constable Roop Prakash from 8 p.m. to 8 a.m. and Shri Roop Prakash stated that there was no occasion for them to search any taxi. It is strongly contended that the enquiry officer ought to have recorded the statements and produced the alleged family members of the complainant who identified the photograph and he should have given an opportunity to the applicant to cross-examine the said persons. It is urged that the appellate authority failed to distinguish a case of no evidence and case of some evidence. The identification procedure was unfair. It is finally urged that the respondents had made up their mind to punish the applicant in that even in the show cause notice pursuant to the enquiry report they required the applicant to show cause as

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to why the suspension period be not treated as not spent on duty. They have prejudged and decided on the verdict even before hearing the applicant.

4. After notice the respondents stated that the complainant had no animus against the applicant or any other police officer and the identification must be considered to be genuine. As the complainant was residing abroad no case was registered against him and it was considered difficult to produce him in the Court on that ground. Out of two photographs, the applicant's photograph was identified by the complainant which proved his misconduct. Residing in London the complainant would not have any intention of making a biased statement because there can not be any ground for enmity of the applicant with the Police Officer at Karol Bagh. The enquiry procedure was fairly conducted and the disciplinary authority passed the order after going through the statements of the prosecution witnesses and defence witnesses; and the other material on record. The enquiry was conducted in accordance with the procedure established in law. It is alleged citing a number of authorities of the Hon'ble Supreme Court that this Court cannot sit as an appellate authority and cannot either reappreciate evidence or question the appropriateness of the punishment awarded.

5. It is now a settled position of law that this Court can interfere where the punishment is awarded in disciplinary proceeding without any evidence. In Union of India vs. H.C. Goel, AIR 1964 SC 864 at page 870, it was observed thus: -



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"It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

6. It was also observed in the aforesaid case that "mere suspicion should not be allowed to take the place of proof even in domestic enquiries."

7. In the case of State of Assam vs. Mohan Chandra Kalita, AIR 1972 SC 2535, it was held by the Hon'ble court that when there was no evidence to connect the delinquent with the allegation concerned, the charge cannot be sustained by mere conjectures.

8. In State of Madras vs. A.R. Srinivasan, AIR 1966 SC 1827 at para 16, also the Apex court observed thus:-

"It may be that in disciplinary proceedings taken against public servants, the technicalities of criminal law cannot be invoked, and the strict mode of proof prescribed by the Evidence Act may not be applied with equal rigor; but even in disciplinary proceedings, the charge framed against the public servant must be held to be proved before any punishment can be imposed on him."

9. Sufficiency of evidence in proof of the finding by a domestic Tribunal may be beyond judicial scrutiny as held in several decisions by the Hon'ble Supreme Court but it was held in the case of State of Haryana vs. Ratan Singh, AIR 1977 SC 1512 thus:- "Absence of any evidence in support of a finding is certainly available for the court to look into

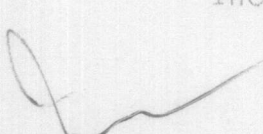
because it amounts to an error of law apparent on the record.", though the appeal was allowed on the facts of that case.

10. In the case of B.C. Chaturvedi vs. Union of India, 1995 (6) SCC 750 on which strong reliance was placed by the learned counsel for the respondents during his arguments, no doubt, the scope of judicial review was elaborately discussed and several principles in that regard have been laid down by the Hon'ble Supreme Court. However, in the said decision itself it was held, inter alia, thus:-

" 12..... The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding being such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case." (emphasis supplied)

11. The decision in H.C. Goel's case (supra) was also relied upon by the Hon'ble Supreme Court in the above case.

12. In this case the complainant was not examined: the complaint was belated although the complainant stayed in India for 2 and 1/2 months after the incident. The complaints were contradictory. The first complaint says that he was searched and the second complaint says that he was trying to change his pounds into rupees. Only two photographs were sent and that too after 7 months of the incident. The photographs were not produced on record. The



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sheet anchor of the applicant's defence is that the photographs of all police personnel on duty in the area was not sent. This area is the meeting point of three police stations. Focussing on two photographs without any rhyme or reason particularly in such a case of complaint where one of the three officers was stated to be a Sikh is not justified. All the defence witnesses who were on duty with the applicant deposed that the applicant was with them through out the night and no alleged incident had happened. Refer to the statement of prosecution witness no.2 Constable Sher Singh who stated that he was detailed at Link Road Chambri with Head Constable Roop Prakash and he stated that neither any vehicle was stopped for checking nor any money was taken from any person. Head Constable Roop Prakash, DW1 stated that the applicant was also present with him from 8 p.m. to 8 a.m. on 11.11.1991 and during their duty hours they neither stopped any taxi nor checked any vehicle nor seized any cash. It is now clear that an enquiry where material witnesses were not called cannot be a proper enquiry. Further in a departmental enquiry denial of opportunity to cross-examine witnesses is fatal for the enquiry proceedings as it violates the principles of natural justice. Even the non-examination of the complainant is a basic defect in this enquiry. The list of authorities cited by the applicant is as under -

1. ATR 1990(1)CAT 680,
2. ATR 1988(2)CAT 674,
3. ATR 1986(2) SC 252
4. OA 1013/90 paras 10 & 11 (Mahavir Vs. Union of India)
5. AIR 1958 SC 300 (Khem chand Vs. UOI).



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13. The learned counsel for the applicant cited the decision of Khemchand (supra) wherein the ingredients of a reasonable opportunity under Article 311(2) of the Constitution has been stated to include an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence.

14. In this case the only ground for levying the extreme penalty of dismissal was the identification of the applicant by the family members of the complainant. The complaint should have been shown. The complainant should have been examined and produced for cross-examination. Any reasonable person would not have ruled out that this might be a case of mistaken identity. The focussing for identification of only two photographs showed a biased mind on the part of the disciplinary authority. There was no other corroborative evidence either from the prosecution witnesses or from the defence witnesses. This is a case of illegally seizing 700 pounds. This is a substantial amount of money. The respondents should have at least made their own enquiry as to the ultimate destination of this money. Silence of the complainant for a period of three months after the incident was highly suspicious. The failure of the complainant to immediately lodge a complaint itself shows that he did not want to face the process of law in India because of some apprehension of a misdemeanor committed by him. This is a clear case of no evidence. The only evidence is the identification by the family members which was not corroborated. The said family members were not examined. They were not produced before the enquiring



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authority nor they were allowed to be cross-examined by the applicant. We are of the opinion that this is a case of no evidence. The impugned orders dated 12.6.1993 passed by respondent no.3 and the appellate order dated 23.5.1994 passed by respondent no.2 are hereby quashed. The respondents are directed to take the applicant into service within one month of the receipt of a copy of this order. The pay and allowances admissible and payable during the period of absence from duty till reinstatement shall be determined by the competent authority under Rule 54/54-A of the Fundamental Rules, *or the corresponding rule applicable to the Delhi Police Act*. The competent authority shall pass a speaking order under FR 54-A after giving the applicant an opportunity of being heard within a period of 12 weeks from the date of receipt of a copy of this order. Other consequential benefits to be claimed, if any, like seniority, promotion, etc. shall also be considered by the competent authority after the above order is passed on representation or suo motu within 4 weeks thereafter. The O.A. is allowed. No order as to costs.



(N. Sahu)

Member (Admnv)



(Dr. Jose P. Verghese)

Vice Chairman (J)

rkv.