

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1509/94



New Delhi, this the 25th day of July, 1999

HON'BLE SHRI S.P. ADIGE, VICE-CHAIRMAN (A)
HON'BLE SHRI P.C. KANNAN, MEMBER (J)

Shri Chand Yadav
s/o Shri Bhairon Singh Yadav,
R/o A-6, Old Police Lines,
Delhi.

...Applicant

(By Advocate:- Shri Zafar Sadiq)

Versus

1. Commissioner of Police, Delhi.
Police Headquarters, I.P. Estate,
New Delhi.

2. Addl. Commissioner of Police,
CID, Police Headquarters,
I.P. Estate, New Delhi.

3. Union of India,
Ministry of Home Affairs,
Government of India,
New Delhi through its Secretary.

...Respondents

(By Advocate: Shri Rajinder Pandita)

O R D E R

By Hon'ble Shri P. C. KANNAN, MEMBER (J)

The applicant who is an Inspector of Police under the Respondents, in this O.A. has challenged the punishment of forfeiture of his one year approved service temporarily for a period of one year, entailing proportionate reduction in his pay by one stage in the time scale of pay under the impugned ~~order~~ order dated 4.3.1993 (Annexure 'A') and the impugned appellate order dated 18.5.1994 (Annexure 'B'). The applicant also prayed for the removal of his

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name from the list of persons of doubtful integrity.

However, this prayer was not pressed at the time of hearing.

2. The case of the applicant is that he joined the Respondents as A.S.I.(Min) on 1.10.1964 and confirmed as such w.e.f. 7.12.1968. He was promoted to the rank of S.I. (Min) w.e.f. 2.1.1970 and confirmed in the said rank. A departmental enquiry was ordered under Sec. 21 of the Delhi Police Act by the order dated 10.7.1990 against the applicant on the allegations that he constructed one complete floor with the basic amenities on two floors at a cost of more than Rs. 1 lac in the month of June/July, 1989 on a plot allotted to him by D.D.A. He also failed to inform the Department about the source of huge investment incurred for the construction as required under the Conduct Rules. He also further failed to maintain ~~the~~ required standard of probity in making part payment as labour charges to Shri Meel Chand, a mason and threatened him for false involvement in a criminal case on the strength of his rank in the Police Department. When the mason asked for the balance payment.

3. The departmental enquiry was entrusted to Sh. N.S.Rana, D.C.P.(Crime Prevention and Narcotics) Delhi which was later on transferred to Shri A.S.Khan, D.C.P., who subsequently completed the same and submitted his findings concluding therein that from the statement of PWs and other documentary evidence on record it has been proved that the applicant had made certain construction at a cost of more than Rs. 1 lac at his plot in Shalimar Bagh acquired by him from D.D.A. and did not make full payment of Rs. 20,000/- payable to Shri Meelchand, the mason when Sh. Meel Chand asked for the balance payment/amount payable to him, the applicant threatened him and refused to make the payment.

(X)

The report of the inquiry officer was furnished to the applicant who submitted his representation dated 24.9.1992. The disciplinary authority after considering the inquiry officer's report and the representation, and giving a personal hearing to the applicant, agreed with the findings of the inquiry officer and awarded the punishment (Annexure 'A'). An appeal preferred against the punishment order by the applicant has also been rejected by the appellate authority (Annexure 'B'). The applicant has challenged the punishment order and the order of the appellate authority on several grounds as stated in para 5 of the O.A. The main grounds are that: (i) the order of punishment is violative of Rule 8 (d) of the Delhi Police (Punishment and Appeal) Rules, 1980; (ii) The charges against the applicant had not been substantiated; (iii) before holding a regular departmental enquiry (P/E) a preliminary enquiry was conducted by D.C.P. (Vigilance) in which he recorded the statements of two persons. A copy of the (P/E) and statements recorded were not furnished to the applicant; (iv) the first inquiry officer Shri N.S. Rana, DCP (Crime) recorded statements of S/Shri Mukesh Kumar, Jagdish Chander and Meel Chand and these witnesses were also duly cross-examined. However, the second enquiry officer to whom the inquiry was transferred again recorded the statement of Shri Meel Chand; (v) The complaints made by Shri Meel Chand were not furnished; (vi) The enquiry officer held that the charge no. 1 with regard to the not furnishing information to the Department is not proved. However, both the disciplinary authority and the appellate authority have taken into consideration this part of the charge while awarding the punishment; (vii) The appellate authority erred in believing the bald statements of witnesses without any other documentary and other evidence; (viii) The impugned order of punishment is arbitrary and unjustified and the observations were

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irrelevant and uncalled for; (ix) the inquiry was based on unanimous complaint which is not permissible and (x) The enquiry was not concluded within the maximum period prescribed under the instructions of the Respondents.

4. The respondents in their reply denied the various allegations and stated that the inquiry proceedings were conducted strictly in accordance with the rules and the applicant was given a reasonable opportunity at all stages of inquiry and the findings of the inquiry officer were based on evidence and the orders of the Disciplinary authority and the appellate authority are in accordance with the rules and valid. The Respondents stated that a regular departmental enquiry was ordered on the basis of vigilance report. However, the preliminary enquiry report was not relied upon on the charge and, therefore, the inquiry officer rejected the request for furnishing the same as the same was, irrelevant for the purpose of inquiry.

5. Respondents also stated that enquiry officer considered all the objections raised before him by the applicant and gave detailed reasons for rejecting some of the requests made by the applicant during the course of enquiry. The respondents further stated that the findings of the inquiry officer are based on evidence and the report is in accordance with the rules. The punishment imposed upon the applicant by the disciplinary authority and the order of the appellate authority are also in accordance with the rule 8(d)(ii) of the Delhi Police (Punishment & Appeal) Rules, 1980 and the applicant was given reasonable opportunity at every stage of enquiry and the orders passed by the disciplinary authorities are in accordance with the rules.

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6. We have heard Shri Zafar Sadiq, counsel for applicant and Shri Rajinder Pandita, counsel for respondents.

7. Counsel for the applicant submitted that the enquiry officer did not furnish a copy of the earlier complaint made by Sh. Meel Chand and also a copy of the preliminary report enquiry/as demanded by the applicant and, therefore, the whole enquiry is liable to be struck down. We find that the earlier complaint from Meel Chand and the preliminary enquiry report were not relied upon. ^{by the inquiry officer} The next ground was that the first enquiry officer recorded statements of three witnesses and they were also cross-examined. However, the second enquiry officer again recorded the statement of one of the three witnesses Sh. Meel Chand who had already been examined by the earlier enquiry officer and in the circumstances the procedure followed by the second inquiry officer was violative of the rules. The respondents in their reply asserted that the earlier enquiry officer examined only two witnesses and thereafter the proceedings were transferred to the second inquiry officer. The applicant has not placed any documentary evidence to prove his stand. We, therefore, reject this contention also. He further stated that in accordance with the instructions issued, the enquiry is required to be completed within a period of three months. These instructions have not been followed by the enquiry officer. These instructions are not mandatory requirement under the D&AR Rules. We cannot, therefore, agree to this contention. The next ground was that the enquiry officer and the disciplinary authority believed bald statements of the witnesses, without any other documentary and other evidence and in the circumstances, the whole enquiry is based on 'no evidence' and liable to be quashed. The ^{has} inquiry officer/ given reasons for coming to certain conclusions. The disciplinary and the appellate authority

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had concurred with the conclusions of the inquiry officer.

8. Hon'ble Supreme Court in the case of B.C.Chaturvedi versus Union of India (1995(6) SCC 750 clearly held that if the findings of the disciplinary authority/appellate authority are based on some evidence, courts/Tribunals cannot re-appreciate the evidence and substitute its own findings. The relevant observations in paragraphs 12 & 13 reads as under:-

*12. xxxxxxxxWhen an inquiry is conducted on charges of misconduct by a public servant, the Court-Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of charge. The court-Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. 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 it violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal."

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9. The next ground urged before us is that the punishment imposed amounts to double punishment and, therefore, violative of rule 8 (d) of the Rules. In the light of the recent Full Bench Judgement of this Tribunal, delivered on 18.5.1999 in the case of A.S.I.-Chander Pal vs. Delhi Admin. & Ors, the punishment imposed upon the applicant cannot be regarded as violative of Rule 8(d) of the Delhi Police (Punishment & Appeal) Rules, 1980. We, therefore, reject this contention also.

10. The charge against the applicant was that he had constructed one complete floor and basic amenities at two floors at the cost of more than Rs. 1 lac on his flat acquired by him from D.D.A. and he failed to inform the department as required under the Rules and that he failed to maintain required standard of probity in making payment to Shri Meel Chand, Mason. Four witnesses were examined by the inquiry officer. A reference to the proceedings shows that the inquiry was initially entrusted to Shri N.S. Rana, D.C.P., and subsequently transferred to Shri A.S. Khan to complete the same. On the basis of the evidence placed before him, the inquiry officer concluded that the applicant had made certain constructions at a cost of more than Rs. 1 lac and also submitted that the applicant did not make the full payment payable to Shri Meel Chand, the Mason. With regard to the non-intimation to the department of the investment as required under the rules, the inquiry officer concluded that even though no evidence was furnished by the department, the applicant had also not furnished any evidence to show when he intimated the department about the investment of over Rs. 1 lac made by him as required in the Conduct Rules.

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11. The enquiry report which consists of 28 pages, refer to all the objections raised by the applicant in the report at pages from 10 to 13. We examined the same and are in full agreement with it. We also examined the report and are of the view, that the enquiry was conducted in accordance with rules & instructions and the applicant was not in any way prejudiced in the conduct of the enquiry and the applicant was given reasonable opportunity. The report of the enquiry officer clearly indicates that his findings were based on evidence and it cannot be stated that it was based on 'no evidence'.

12. The order of the disciplinary authority shows that it examined the findings of the enquiry officer in the light of objections/comments made by the applicant. It rejected the contention of the applicant that the enquiry officer had exonerated him ~~in respect of~~ first portion of the charge that the applicant did not inform the department regarding his huge investment as required under rule 18 of the C.C.S. (Conduct) Rule. It is observed that as the applicant had invested more than Rs. 1 lac on his plot acquired by him it was his duty to inform the department in this regard. As the applicant failed to furnish any proof or statement that he intimated the department in this behalf, the disciplinary authority found that the charge in this regard may also be regarded as proved. The disciplinary authority also considered in detail twelve grounds/objections raised by the applicant in its order and rejected the same as untenable, giving its reasons for such rejection and held the applicant guilty of the charges. Taking a lenient view, ^{and} keeping in view the long service rendered by him, the authority imposed the said punishment. The appellate order (Annexure A-3) also refers to all the grounds of appeal taken up by the applicant and held that the grounds of appeal are untenable. The appellate

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authority upheld the order of punishment. In the facts & circumstances, we hold that the applicant has been given a reasonable opportunity of being heard at all stages of enquiry and the findings of the enquiry officer; disciplinary authority's order and appellate order were based on evidence and ^{and} in accordance with the rules.

13. The O.A., therefore, fails and is accordingly dismissed. No costs.

Prakash

(P.C.KANNAN)
MEMBER (J)

Adige
(S.R.ADIGE)
VICE-CHAIRMAN (A)

/Narayana/