

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1063/94

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T.A. No.

DATE OF DECISION 30.7.99

(8)

Const. Phare Ram

....Petitioner

Shri Shanker Raju

....Advocate for the
Petitioner(s)

VERSUS

Lt. Governor & Anr.

....Respondent

Shri Anil Singhal proxy
for Shri B.S. Gupta.

....Advocate for
Respondents.

CORAM

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

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)

Central Administrative Tribunal
Principal Bench.

O.A. 1063/94

(9)

New Delhi this the 30th day of July, 1999

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

Const. Phare Ram, No. 1690/DAP,
S/o Shri Jhutar Singh,
R/o 65, South Ganesh Nagar,
Patparganj Road,
Delhi-110092.

... Applicant.

By Advocate Shri Shanker Raju.

Versus

1. Lt. Governor of N.C.T. Delhi,
through Addl. Commissioner of Police,
New Delhi Range, Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
2. Dy. Commissioner of Police,
East District, Shahdra,
Delhi. ... Respondents.

By Advocate Shri Anil Singhal proxy for Shri B.S. Gupta.

O R D E R

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

The applicant is aggrieved by the disciplinary authority's order dated 22.12.1992 who ordered forfeiture of four years approved service resulting in reduction in his pay during which period he would not earn any increment, against which the appeal filed by him was also dismissed by order dated 19.5.1993. The applicant has relied on the order passed by the criminal court wherein the applicant was one of the accused and he was acquitted by the Addl. Sessions Judge, Shahdra by order dated 9.7.1991. In this order, the criminal court has held that the witnesses were

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confronted with their statements recorded u/s 161 Cr.P.C. but they had stuck to their position of not implicating the accused persons, which was held by the court as not fruitful in favour of the prosecution. In the circumstances, the court held that there is not even an iota of incriminating evidence against the accused persons and accordingly the accused, including the applicant in the present case, were acquitted.

2. After the acquittal, the applicant was charged for grave misconduct u/s 21 of the Delhi Police Act, 1978. The charges were that the applicant along with one Jhattur Singh and Rajpal Singh entered the house of one Ravi Dutt, where he stabbed Ravi Dutt with a knife in the abdomen and fled away after hurling threats and waving the knife. On this case, FIR No.378/98 u/s 307/452/34 IPC was registered and tried in the court of Shri J.P. Singh, Addl.Sessions Judge, Shahdara, Delhi. All the PWS i.e. Ravi Dutt, Parveen, Lokesh, Subhash Chand & Rakesh were declared hostile as they resiled from their earlier statements. According to the respondents, this shows that all these prosecution witnesses were ~~none~~ over by the applicant to depose in his favour. He had remained under suspension from 25.8.1989 to 22.12.1991. The departmental inquiry ordered against him had resulted in the impugned punishment orders being passed by the disciplinary authority and the appellate authority which have been impugned in this O.A.

3. One of the main grounds taken by Shri Shanker Raju, learned counsel for the applicant, is that this is a case of no evidence and once the criminal case has ended in his acquittal, the department could not have proceeded against the applicant in a departmental inquiry based on the evidence of the same witnesses. He has also submitted that the Inquiry

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Officer had assumed the role of a prosecutor by cross-examining the prosecution witnesses. He has also alleged that no mandatory approval under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules') has been taken before proceeding in the departmental proceedings.

4. The other main ground taken by the learned counsel for the applicant is that the Inquiry Officer has acted in an illegal manner in taking into account the statements recorded by the witnesses u/s 161 Cr.P.C. in the criminal trial without giving the applicant a copy of these statements which cannot, therefore, form part of the departmental inquiry.

5. The respondents have filed their reply and we have heard Shri Anil Singhal, learned proxy counsel. The respondents have contended that the departmental inquiry has been held against the applicant in accordance with the provisions of the Delhi Police Act and the rules made thereunder and there is no infirmity in the impugned punishment orders. Learned proxy counsel has submitted that the statements of witnesses recorded u/s 161 Cr.P.C. were very much with the applicant, as evident from the competent criminal court's order dated 9.7.1991. He has referred to the portion of the order in which it has been stated that after each of the accused was supplied with the copies of the necessary documents by the prosecution, the prosecution had proceeded with the case. He has, therefore, submitted that the contention of the learned counsel for the applicant that the departmental inquiry

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is vitiated because of non-supply of the ^{statements of the} witnesses recorded u/s 161 Cr.P.C. is untenable. He has also very vehemently contended that the supply of these statements is a pre-requisite in the criminal trial u/s 207 of the Cr.P.C. and, therefore, it should be presumed that even if the copies of the statements had not been given again to the applicant ^{in the} ~~by~~ proceeding ^{held by} against him departmentally, he has not been prejudiced as he was well aware of the statements and had also received a copy of the same in the earlier criminal case. He has also submitted that this plea had not been taken by the applicant at any time earlier. Another contention is that taking into account the acquittal order dated 9.7.1991 and the provisions of clauses (b) and (c) of Rule 12 of the Rules, it cannot be stated that there is any infirmity in the departmental inquiry on these grounds also. He has, therefore, submitted that the O.A. may be dismissed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. One of the main grounds taken by Shri Shanker Raju, learned counsel, is that the departmental proceedings held against the applicant are vitiated because of non-observance of the requirements laid down in Rule 16(i) of the Rules. He has very vehemently submitted that the respondents have failed to give the list of prosecution witnesses together with brief details of evidence to be led by them and the documents relied upon, including statements of witnesses recorded u/s 161 Cr.P.C. on which reliance has been placed. Rule 16(i) of the Rules provides that in all departmental enquiries against police officers of subordinate rank where *prima facie* the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the

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accused officer, the Inquiry Officer has to prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice to him of the circumstances in regard to which evidence is to be regarded and give a list of prosecution witnesses together with brief details of the evidence to be led by them. It is also provided that the documents relied upon by the prosecution have to be given to the defaulter free of charge. Much emphasis has been placed by the learned counsel for the applicant on this provision that since the statements recorded u/s 161 Cr.P.C. by the prosecution witnesses had not been given to the applicant, no punishment order can be imposed on him and the same will, therefore, have to be quashed and set aside. Sub-rule (iii) of Rule 16 provides as follows:

"If the accused officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been re-recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record".

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From Rule 16(iii), it is, therefore, seen that the Inquiry Officer is empowered to bring on record the earlier statement of any witness which had been recorded by a police officer during the investigation or judicial inquiry or trial on which the applicant is allowed to take notes and he is also bound to answer any questions which the Inquiry Officer may deem fit to put to him with a view to elucidating the facts thus brought on record. In view of the provisions of sub-rule (iii) of Rule 16 of the Rules, we find no force in the arguments submitted by Shri Shanker Raju, learned counsel that the statements of witnesses recorded at the investigation in the judicial inquiry/trial before the criminal court could not have been brought on record in the departmental proceedings without the respondents supplying him these statements once again. In the judgement of the learned Addl. Sessions Judge dated 9.7.1991, it has been stated that the accused, including the applicant Phare Ram, have been supplied with the copies of necessary documents by the prosecution. Under section 207 of the Cr.P.C. the statements would include ~~xxx~~ statements recorded u/s 161 of all persons whom the prosecution proposes to examine as its witnesses. It is noted from the documents and records that the applicant has referred to these statements recorded u/s 161 Cr.P.C. of the witnesses who had been declared hostile. On perusal of the representation of the applicant submitted to the Deputy Commissioner of Police and the appeal to the Addl. Commissioner of Police, it is seen that the applicant has doubted the authenticity of the statements recorded during the investigation itself as well as taken the objection that the statements recorded u/s 161 Cr.P.C. cannot be used in the DE finding, but it appears that he was very much aware of these statements and had copies of the same. In the circumstances, the contention of Shri Shanker Raju, learned counsel that the

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applicant had been greatly prejudiced by non-supply of these statements of witnesses recorded during investigation in the criminal trial which goes to the root of the disciplinary proceedings, cannot be accepted. Rule 16(iii) provides that statements of witnesses recorded by a police officer superior in rank to the accused officer during investigation or judicial inquiry or trial can be brought on record in the departmental proceedings and we, therefore, see no infirmity on this ground. In the facts and circumstances of the case, we see no force in the submissions made by the learned counsel that the relevant papers, including the statements, are in the file with the counsel of the applicant who handled the criminal trial because the applicant was very much aware that these statements were being ^{referred to} ~~used~~ in the departmental inquiry and if he ^{had} wanted, he could have got those documents. During ^{the} hearing learned counsel has, however, submitted that the applicant has not asked for these documents specifically which also goes to show that the applicant was very much in possession of these statements of witnesses recorded during the inquiry u/s 161 Cr.P.C. Therefore, this ground fails and is rejected.

8. The departmental inquiry initiated against the applicant in this case is after the conclusion of the criminal trial in FIR No. 378/89. Therefore, in the facts of the case, the contention of the learned counsel for the applicant that the respondents have failed to obtain prior approval of the Addl. Commissioner of Police as to whether a criminal case should be registered and investigated ^{u/s a} and departmental inquiry should be held under Rule 15(2) of the Rules, is not relevant as the criminal case has already concluded. The present inquiry has been held after conclusion of the criminal case as provided in Rule 12(b) of the Rules. In the circumstances,

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the contention of the learned counsel for the applicant that departmental inquiry is vitiated for lack of prior approval under Rule 15(2) of the Rules is untenable and is accordingly rejected.

9. On careful perusal of the Inquiry Officer's report and the impugned punishment orders as well as the evidence on record, we are unable to agree with the submissions of the learned counsel for the applicant that this is a case of no evidence. He has again vehemently relied on the findings of the criminal court that 'the above evidence shows that there is not even an iota of incriminating evidence against the accused persons'. The proof of guilt in a criminal court is quite different from the proof required in a departmental inquiry proceedings, one amounting to "proof beyond reasonable doubt, while the other depends on "preponderance of probabilities." Both the disciplinary authority's order as well as the appellate authority's order are reasoned orders which have been passed after affording an opportunity to the applicant to defend his case in the departmental proceedings. It is also settled law that this Tribunal should not reappreciate the evidence or come to its own conclusions and substitute the punishment unless the findings are utterly perverse or arbitrary. (See for example the observations of the Supreme Court in Union of India vs. Upendra Singh (JT 1994 (1) SC 658) and Union of India vs. Parma Nanda (AIR 1989 SC 1185). We have also considered the other contentions of the learned counsel for the applicant but we do not find them tenable in the facts and circumstances of the case and the rule position.

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10. For the reasons given above, we see no merit in this application. O.A. fails and is dismissed. No order as to costs.

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

V. Ramakrishnan
25/11/1971
(V. Ramakrishnan)
Vice Chairman (A)

'SRD'