

Central Administrative Tribunal, Principal Bench

Original Application No.1556 of 2000

New Delhi, this the 2nd day of July, 2001

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

Ex.H.C. Rajbir Singh
95/DAP,
S/o Shri Sultan Singh, aged 43 years
previously employed in Delhi Police
R/o RZ-231, Dharau Pur Ist, Najaf Garh
New Delhi

- Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India
Through its Secretary
Ministry of Home Affairs,
North Block, New Delhi
2. Commissioner of Police,
Delhi
Police Head Quarters
I.P. Estate, M.S.O. Building
New Delhi
3. Addl. Commissioner of Police
Armed Police
New Police Lines
Kingsway Camp, Delhi
4. Dy. Commissioner of Police
Ist Bn, DAP
New Police Lines, Kingsway Camp
Delhi

- Respondents

(By Advocate - Shri George Paracken)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J)

This OA has been filed by Ex. Head Constable Shri Rajbir Singh whereby he has challenged the impugned order of dismissal from service.

2. Facts in brief are that applicant was proceeded departmentally on the following allegation:

"It is alleged against H.C. Rajbir Singh No.93/ND that he was not on duty at Vijay Chowk on 10.6.96. At about 1.30 P.M. two boys namely Anuj P. Nagar S/o Shri Priya Kant Nagar R/o A-2, Kothari Sadan 11th Road, Khar West Bombay and Vishal Reddy, S/o

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Shri Krishana Reddy R/o A-6, Kathori Sadan 11th Road, Khar, West Bombay came at the sides of R.P.Bhawan and at the site of slope on road thereof were taking photograph of the building from automatic fixed camera. At the same time he came running towards them and told them as they have taken photography of VIP there and told them as they have taken photographs of V.I.P. cars, action will be taken against them in which they can be convicted. The boys told him to take out the real of camera and destroy it but he denied and took them to SI Bal Kishan who after making enquiries from the boys, allowed them to go and thereafter he (HC Rajbir Singh 93/ND) again detained the boys till 4 PM and relieved only after taking Rs.700/-. It is also alleged that he came to P.S. Parliament Street under intoxication from V.I.P. duty and after medical examination Doctor Anoop C.M.O./R.M.L. Hospital opined "smell of alcohol in breath positive, no sign of local injury. Has taken alcohol but not under the affect of it when brought to casualty."

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3. An enquiry was conducted. The applicant was supplied usual documents before conducting the disciplinary enquiry and evidence was recorded. The enquiry officer returned the findings holding that the allegations against the applicant have been substantiated. Thereafter the disciplinary authority vide the impugned order, imposed the penalty of dismissal from service against which an appeal was preferred and the appellate authority upheld the orders of the disciplinary authority. Revision petition was also filed by the applicant which was also rejected.

4. To challenge the impugned orders, the main ground taken by the applicant is that preliminary enquiry conducted by the SHO, Parliament Street disclosed commission of cognizable offence and therefore, under Rule 15(2) of Delhi Police (Punishment and Appeal) Rules, a sanction was required to be obtained from the concerned Additional Commissioner of Police to conduct a disciplinary enquiry and since in this case no consent had been taken, the enquiry itself is vitiated. As far this aspect of the case is concerned, we find that the so-called enquiry conducted

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by the SHO had not been initiated for the purpose for which a P.E. is conducted. The purpose of holding a P.E. is "(i) to establish the nature of default and identity of defaulter(s); (ii) to collect prosecution evidence; (iii) to judge quantum of default; and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry."

5. But the record in this case shows that on 10.6.96, two tourist boys namely Anuj P. Nagar and Vishal Reddy who had come to Delhi for site seeing and were found taking photographs at Vijay Chowk, were stopped by the applicant who took them to his superior officer where they were detained till 4.00P.M. After their release, the tourist boys informed about this incidence to their relatives who lodged a complaint on telephone no.100 which was registered vide D.D.No.16-A. An enquiry was conducted with regard to D.D. entry lodged on the basis of report made to the Police Control Room on telephone no.100 and during the enquiry it was revealed that how the applicant had extorted money from the tourist boys. The SHO, Parliament Street had asked the tourist boys to give a complaint in writing but they did not do so. The matter was brought to the notice of the concerned DCP who directed to hold a disciplinary enquiry against the applicant.

6. The question now arises whether the enquiry conducted by the local police on a complaint recorded vide D.D.No.16-A can be said to be a preliminary enquiry leading to holding a regular departmental enquiry or not. After giving our thoughtful consideration to the matter, we are of the opinion that local police was required to conduct an enquiry into the allegations coming as a complaint through

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4 a D.D. report in accordance with Cr.PC and it was that enquiry which was conducted by the police officials of Police Station Parliament Street and by no stretch of imagination it could be said to be a P.E. under Rule 15 of Delhi Police (Punishment and Appeal) Rules. It was altogether a different enquiry conducted into the report lodged through police control room. (A)

7. As the complainants had refused to give a complaint in writing, the FIR could not be registered and, therefore, the D.C.P. had straightaway taken a decision to conduct a disciplinary enquiry against the applicant. At this stage, learned counsel for the applicant submits that applicant was identified only during the enquiry conducted into the D.D. report and that in the complaint lodged through P.C.R., constable Prithvi Singh was stated to have extorted the money from the tourist boys. However, still it does not make a difference that the enquiry conducted was to look into the complaint lodged through a D.D. report as per provisions of Cr.PC and it was not for the purpose as enshrined under Rule 15 of Delhi Police (Punishment and Appeal) Rules.

8. Now coming to the conduct of the enquiry, the applicant has alleged that it is a case of no evidence as the complainants had not been examined in the enquiry and therefore, there is no evidence against the applicant and that the oral submissions of the complainants in the Police Station should not have been relied upon by the disciplinary authority. To that extent, we may mention that strict adherence to the rules of Evidence Act is not to be observed during the course of a departmental enquiry report and it is only the preponderance of probabilities

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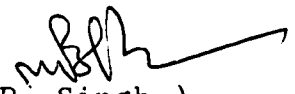
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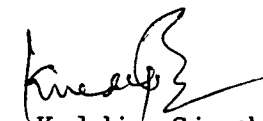
which is to be seen. Since during the enquiry under Cr.PC which was conducted in the police station, both the tourist boys were present and the officer who had conducted the enquiry into the D.D. report had submitted its findings based on the oral submissions of those boys, so their non-production in the regular departmental enquiry does not affect the findings reached at by the enquiry officer and the findings cannot be said to be vitiated. The enquiry officer had recorded his findings based on the evidence which was produced before him. This court cannot re-appreciate the evidence. In any case, it cannot be said that it is a case of 'no evidence' at all.

9. Applicant has not alleged that principles of natural justice have not been followed in his case. We find that proper opportunity had been given to the applicant to defend his case and there is no ground to interfere with the impugned orders.

10. Applicant's counsel also argued that taking into consideration the long unblemished record of the applicant, the quantum of punishment is on higher side. On this score, we may mention that the disciplinary authority had passed the impugned order after taking into consideration each and every aspect of the case and this Tribunal while exercising the power of judicial review, is not supposed to comment as to what punishment should be awarded on the delinquent official in a particular case.

11. In the result, we find no merit in this OA and it is, therefore, dismissed. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)