

Central Administrative Tribunal, Principal Bench

Original Application No.1583 of 2000

New Delhi, this the 14th day of January, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. V. Srikantan, Member (A)

Constable Hoshiyar Singh No.1262/N.E
S/o Shri Bhuru Ram, aged 29 years
Presently posted at D.C.P. Office North East
R/o Vill. & P.O. Banwal District-Rewari
Haryana

....Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India
Through Its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Joint Commissioner of Police,
New Delhi Range,
Police Head Quarters, I.P. Estate,
M.S.O. Building,
New Delhi
3. Addl. Dy. Commissioner of Police,
North East District,
Seelam Pur, Shahdara,
Delhi

....Respondents

(By Advocate: Mrs. Jasmine Ahmed)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

By virtue of the present application, Constable Hoshiyar Singh seeks setting aside of the punishment order copy of which is Annexure A-2 passed by the Additional Deputy Commissioner of Police dated 17.8.98 and also the appellate order dated 24.9.99 passed by the Joint Commissioner of Police.

2. The relevant facts are that in a departmental action initiated against the applicant (Constable Hoshiyar Singh), the enquiry officer had exonerated him but after the

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note of disagreement, the Addl. Deputy Commissioner of Police namely the disciplinary authority imposed the punishment which reads:

"Therefore, I order that 5 years approved service of HC Malkhan Singh No.316/NE and Ct. Hoshiyar Singh, No.1262/NE be forfeited temporarily for a period of 5 years entailing proportionate reduction in their pay with immediate effect. They will not earn increment of pay during the period of reduction and on the expiry of this period, the reduction will not have effect on postponing their future increment of pay. Their suspension period from 15.9.97 to 11.2.98 be also treated as not spent on duty."

The applicant preferred an appeal which was dismissed. Hence the present application.

3. Learned counsel for the applicant asserted that there is no dereliction of duty against the applicant even as per the charge and, therefore, the findings of the disciplinary as well as appellate authority cannot be sustained.

4. To appreciate the said controversy, we take liberty in referring to the charge that was served on the applicant which reads:

"I, Inspr. Suresh Kumar Dabas, I/C Special Staff NE Distt. (E.O.) charge you HC Malkhan Singh No.316/NE and Ct.Hoshiyar Singh No.1262/NE that during an enquiry conducted by P.G.Cell/NE on the complaint of one Sh.Ved Ram S/o Shri Verma r/o Village Sher Pur, Delhi it had been revealed that an information was received from PCR on 8.8.97 vide DD No.22 at PP Khajuri Khas, PS Gokal Puri that one person has been stabbed at Sher Pur Chowk, Karawal Nagar Road, Delhi. You HC Malkhan Singh No.316/NE attended that call and reached the spot alongwith Const. Hoshiyar Singh

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No.1262/NE and found that one person namely Chiku @ Janeshwar s/o Inder Pal r/o Ramji Lal Market, Tukmir Pur, Delhi was hurt by sharp edged on his forehead. Chiku was taken to GTB Hospital for medical examination wherein Doctor issued MLC No.A-3006/97. According to the version of Chiku, he was stabbed by one Ved Ram @ Vedi because of refusal to provide a glass for drinking alcohol. You HC Malkhan Singh sent a rukka to Duty Officer PS Gokal Puri to register a case U/S 324/506 IPC and the same was registered. Later on Ved Ram @ Vedi was arrested and was taken to GTB Hospital for medical examination on 9.8.97. The Doctor issued MLC No.C-2163/97 in respect of Ved Ram @ Vedi and stated in his report that alcoholic smell is present in his breath but he was not under influence of alcohol and no external injuries seen on his body. Since Ved Ram @ Vedi was arrested on 9.8.97 while the case was registered on 8.8.97, there was no logic to take Ved Ram @ Vedi for medical examination in the night of 9.8.97 at 11.40PM. Secondly, there was no point in applying section 506 IPC in that case. There were clear instructions that section 506 IPC will not be applied without the prior approval of District DCP, but you HC Malkhan Singh failed to follow the instructions which shows some foul play in arresting Ved Ram @ Vedi and registering a case against him.

The above act on the part of you HC Malkhan Singh No.316/NE and Ct. Hoshiyar Singh No.1262/NE amounts to grave misconduct, negligence, misuse of official power and dereliction in the discharge of your official duties, which renders you liable for departmental action under the Delhi Police (Punishment and Appeal) Rules, 1980."

5. Bare reading of the same reveals that at best certain assertions were being made against Head Constable Malkhan Singh. So far as the applicant Constable Hoshiyar Singh is concerned, it had simply been asserted that he accompanied Head Constable Malkhan Singh to the spot where the incident had taken place.

6. We are conscious of the fact that in a

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disciplinary enquiry, on preposity of probabilities, even conclusions can be arrived against the alleged delinquent. But necessarily there has to be some basis to come to that conclusion. If it is totally devoid of any assertion, allegation, material on the record or it is one of those cases where no reasonable person can come to such a conclusion, necessarily in judicial review such a finding can be set aside.

7. The purpose of conveying the assertions or the charge is that the alleged delinquent must know the nature of allegations so that he could meet the assertions made against him. This is on a well recognised principle of natural justice. Necessarily such matters have to be examined based on the facts of each case without causing any prejudice to the applicant.

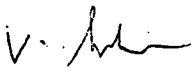
8. What is the position herein? We have already reproduced above the charge that was conveyed to the applicant. There is not a whisper or any act or omission on the part of Constable Hoshiyar Singh. All that was alleged, if there was anything, that was against Head Constbale Malkhan Singh. In the absence of any assertion or any act or omission of the applicant, necessarily he could not have been held guilty of any dereliction of duty in this regard. In this process, it must be held that the matter in question before us pertaining to Constable Hoshiyar Singh falls in the exceptions referred to above that there was no material against him even as per the assertions made and necessarily, therefore, the impugned


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order cannot be sustained.

9. Resultantly we allow the application and quash the impugned orders.


(V. Srikantan)
Member (A)


(V.S. Aggarwal)
Chairman

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