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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2336/2000

New Delhi this the 4th day of December. 2001

HON'BLE MR. V.K. MAJOTRA. MEMBER (A)
HON'BLE MR. KULDIP SINGH. MEMBER (J)

Ex.Ct.Ram Pal Singh.
No.2495/PCR (PIS No.28821243)
S/o Shri Badri Nath
R/o Village & P.O. Jasia.
P.S. Sadar. Distt.Rohtak
Rohtak (Harvana)

-Applicant

(By Advocate: Shri Mohit Madan. proxy for
Mrs. Avnish Ahlawat)

Versus

1. Commissioner of Police.
Police Headquarters. I.P. Estate.
New Delhi.
2. Additional Commissioner of Police.
Police Headquarters. Police Control
Room. I.P. Estate. New Delhi.
3. Additional Dy. Commr. of Police.
Police Headquarters. Police Control
Room. I.P. Estate. New Delhi.

-Respondents

(By Advocate: Shri George Paracken)

ORDER (Oral)

Hon'ble Shri Kuldip Singh. Member (J)

This OA has been filed by Ex-Constable Ram Pal Singh who has been removed from service vide disciplinary authority's order dated 20.5.99. The disciplinary authority had passed this order after a regular enquiry was held against the applicant. Against the order of the disciplinary authority. the applicant had also filed an appeal which was also rejected vide order dated 26.11.99.

2. In this application under section-19. the applicant has assailed both the orders of the disciplinary authority as well as the orders passed by the appellate authority. Besides that the applicant

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has also assailed the findings recorded by the Enquiry Officer.

3. The facts in brief as alleged by the applicant are that the applicant along with two other Ex. Constable was proceeded departmentally on the allegations that on 9.5.98 one Shri Jasbir Singh made a complaint to ACP/West Zone/PCR regarding extortion of money by the PCR staff. Upon that the complaint enquiry was conducted by Inspr. Amrik Singh of West Zone/PCR and it was revealed that the PCR staff of P-21 namely. S/Shri HC Ranbir Singh, Constable Dharambir Dutt and Constable Ram Pal Singh (i.e. the applicant) had approached the construction site of the complainant at Plot No. K-1/106, Mohan Garden, New Delhi and extorted Rs.100/- in lieu of construction. The joint enquiry was held against all these three persons. Before the preliminary enquiry into the matter was not conducted again by Shri Ranbir Singh, ACP/South West Zone/PCR and during the course of the said enquiry, the allegations levelled against the PCR staff of P-21 were found to be correct. During the enquiry, various witnesses were examined even the defence witnesses was also examined. The Enquiry Officer concluded that the charges levelled against all the defaulters have been proved. However, the disciplinary authority vide impugned order dated 20.5.99 (Annexure-B) passed an order imposing a penalty of dismissal on Constable Ram Pal Singh and Ct.(Dvr)Dharambir Dutt. However, the disciplinary authority exonerated HC Ranbir Singh due to in-sufficient evidence against him. Appeal against

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the said order preferred by the applicant was also dismissed and the order of the disciplinary authority was upheld.

4. In the grounds to challenge the same, the applicant pleaded that the findings arrived at by the enquiry officer are perverse and are based on no evidence.

5. The applicant further submitted that the preliminary enquiry conducted by ACP Ranbir Singh, which has been relied upon by the enquiry officer, had not been supplied to him. It was also pleaded that the findings recorded by the enquiry officer are based on no evidence as the complainant has failed to identify the applicant, ~~on these grounds~~. The findings arrived at by the enquiry officer cannot be sustained and the same are liable to be quashed. He, therefore, stated that the findings are liable to be quashed and the findings ^{passed in} passed by the disciplinary authority and the appellate authority also cannot be sustained. The respondents submitted that all these documents have been supplied to the applicant. ^{The preliminary report has also been supplied to the applicant}

6. Shri George Paracken, appearing for respondents had also shown to us the departmental file wherein the applicant had mentioned about receipt of certain documents which included the preliminary enquiry report conducted by Inspector Amrik Singh. On the basis of the said application, Shri George Paracken submitted that the copy of the preliminary enquiry report had been supplied to the applicant as

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the applicant in his application before the enquiry officer had acknowledged the receipt of the same. He cannot claim that the preliminary enquiry report was not supplied to him. The respondents also refuted the arguments of the applicant, contending that the disciplinary authority had taken into consideration extraneous matter such as the document exhibited PW-9/A from the enquiry file and the same was exhibited during the proceedings of the enquiry. ^{submitted that} It cannot be said that any extraneous matter has been considered. Learned counsel appearing for the respondents tried to justify the orders passed by the disciplinary authority as well as by the appellate authority, ^{In reply,} Learned counsel for the applicant submitted that in this very case a joint enquiry was held against ^{three officials,} one of the delinquent official ~~who~~ had been exonerated by the disciplinary authority himself and the other delinquent official namely. Constable(Dvr) Dharambir Dutt who was held guilty and was punished. has filed OA which was registered as OA No. 2337/2000. The punishment order of removal passed against him has been quashed by this Tribunal on the same grounds which have been taken by the applicant in the present OA. The applicant also cannot be treated differently and his OA also deserves to be allowed.

7. We have considered the submissions made by either parties. As ~~far~~ the question of non-supply of preliminary enquiry report is concerned. we have seen the departmental file. The respondents' counsel had relied on an application moved by the applicant before the enquiry officer asking for certain documents. In first paragraph. the applicant had acknowledged the

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receipt of certain documents and in second paragraph. he has demanded documents, which have not been made available to him. The findings recorded by the enquiry officer suggest in this case that two preliminary enquiries were held. one conducted by Inso. Amrik Singh and another preliminary enquiry into the matter was ^{Conducted} ~~considered~~ by Shri Ranbir Singh.ACP. The application relied upon by the respondents ^{to} ~~do~~ show the delivery of the preliminary enquiry report ^{but it} ~~only~~ shows that the applicant had acknowledged the receipt of report of enquiry conducted by Inso. Amrik Singh and in second paragraph. he had demanded the preliminary enquiry report which was conducted by ACP Ranbir Singh and there has been no satisfactory reply about the supply of preliminary enquiry report submitted by ACP Ranbir Singh. We have no hesitation to conclude that the report of the preliminary enquiry conducted by ACP Ranbir Singh has not been supplied to the applicant.

8. The counsel for the applicant had submitted that the enquiry officer had not given any reason to arrive at a conclusion of ^{holding} ~~guilty~~ against all the delinquent officials. The enquiry officer has simply re-produced the statement of witnesses recorded by him and thereafter in one line he had concluded in the following terms:-

"on the basis of material/evidence available on the D.E. file. the charges levelled against all the defaulters have been proved".

9. The enquiry officer has not discussed any evidence tendered by either prosecution or by the defence. He has not critically examined any of the

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statement recorded by him. In these circumstances, the enquiry report cannot stand and to support his contentions the counsel for the applicant has also referred to earlier judgment given in OA-2337/2000 in the case of HC Dharambir Dutt, the co-delinquent official: and submitted that the court had held that the findings of the enquiry officer are based on no evidence and are perverse and order of disciplinary authority are also perverse. The judgment rendered by the Tribunal in the earlier OA applies on facts as well as on law in this case.

10. At this stage Shri George Paracken submitted that if the court found that no reasons have been assigned by the enquiry officer in support of the findings that the court can remand back the case to the department and can direct the enquiry officer to assign reasons.

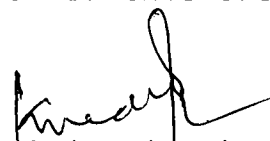
11. Ordinarily, ^{would} we have accepted this plea of the respondents but in the peculiar circumstances in the present case that when the enquiry report ~~was~~ submitted by the enquiry officer holding all the three delinquent officials guilty, had not been accepted by the disciplinary authority and then the enquiry report has further not been accepted by the court while deciding the OA of the other delinquent official, we find that it would be futile if the matter is remanded back to the enquiry officer, particularly, when the judgment given by the court in the earlier OA has been implemented by the department and the other constable has been reinstated. In case, if we remand back the

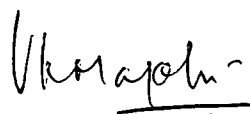
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enquiry and the result is again adverse to the applicant then it would amount to treating two officials in a different manner when charges against both are the same. that would be unnecessary discrimination vis-a-vis one Constable against the another constable.

12. In view of the discussion made above, the OA is allowed. We find that the findings of the enquiry officer cannot be sustained and the same were perverse and the orders passed on the same can also not be sustained. Accordingly, we quash the impugned orders as well as the findings of the enquiry officer. The respondents are directed to reinstate the applicant in service with all consequential benefits within a period of three months from the date of receipt of a copy of this order. No costs.


(Kuldip Singh)
Member (J)


(V.K. Mahtola)
Member (A)

cc.