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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 31/2000

New Delhi, this the 19th Day of December, 2000

Hon'ble Shri V.K. Majotra, Member(A),  
Hon'ble Shri Shanker Raju, Member(J),

1. Shri Brij Pal Singh (1194/E) S/o Shri Harpal Singh,  
Village & Post Office Nagla Ugreasan  
Kuchesar,  
Buland Shehar (U.P.).
  2. Shri Jap Parkash Singh(1728/E) S/o Shri Meer Singh,  
Village & Post Office Bareli,  
Bulandsahar (U.P.).
- .....Applicants.

(By Advocate:Shri Shyam Babu)

Versus

1. Govt. of N.C.T. Delhi  
through Chief Secretary  
5, Sham Nath Marg,  
Delhi - 110 054.
  2. Commissioner of Police,  
Police Headquarter,  
I.P. Estate,  
New Delhi - 110 002.
- ....Respondents.

(By Advocate:Shri Ajay Gupta)

O R D E R(Oral)

Shanker Raju, Member(J)

MA 24/2000 in the OA 31/2000 for joining together is allowed. As a short question of law is involved in the OA the same is being disposed of at the admission stage.

2. The applicant imposed an order passed by the Commissioner of the Police dt. 24.11.99 at Annexure-A whereby on their revision petitions punishment of dismissal from service imposed by the Deputy Commissioner of Police, has been modified to a lesser punishment of forfeiture of two years approved service permanently for a period of two years entailing proportionate reduction in their pay.

3. The facts of the case are as follows:- The applicants have been jointly dealt with departmentally on the allegation that while they were posted in special staff had gone to the house of Smt. Kaushalya Jain on 15.10.96 and demanded a sum of Rs.40,000 as bribe on the pretext that they have been selling gas cylinder in black and would be arrested for it. The matter was finally settled on a sum of Rs.15,000 and it has been alleged that the applicants took Rs.15,000 from Smt. Kaushalya Jain in presence of the Kamal Jain and Saket Gupta. On the basis of the preliminary enquiry conducted by ACP(Operation Cell), a departmental enquiry ordered against the applicants after seeking approval of the Additional Commissioner of Police. During the course of enquiry the prosecution examined, nine witnesses and thereafter charge was framed. After recording of statements of prosecution and defence witnesses the enquiry officer submitted his report finally on 25.11.97 absolving the applicants from the charge as they were implicated without any valid evidence against them. The disciplinary authority vide his communication dated 2.2.98 (Annexure F) [issued a show cause notice to the applicants] disagreed with the findings of the enquiry officer on the ground that the charges regarding the visit of the applicants to the house of Smt. Kaushalya Jain, and the charges money changed hands had been proved during the enquiry. Furthermore the disciplinary authority relied upon the preliminary enquiry conducted by the A.C.P. (Operation) to come to the conclusion that the charge of bribe against applicants stood proved.

4. Further the applicants submitted their reply to the show cause notice. The disciplinary authority vide order dated 14.5.98 imposed a punishment by dismissal to the applicants by observing as under:-

"I have carefully examined the findings of the EO relevant record on the DE file, representations submitted by the defaulter Constables and also gone through the whole gamut of evidence in the light of facts and circumstances of the case. I have also heard them in person on two occasions. Though initially the EO has exonerated the defaulters of the charge without giving due weightage to the most innocent and totally uncolourable statement of one of the PWs who is 13 years old boy of PW-1, EO had forgotten for once that it is not a judicial enquiry but a quasi judicial enquiry where even probability of particular incident matters. The reason for disagreement with the EO is inherent in the above two reasons. Even the replies to the disagreement note is not convincing at all. It is not material that the ACP has recorded the statement or what is material is the matter which has been accorded. It is also material if the defaulters could be linked to the incident as such. In this case it is amply clear that money has changed hands and money has changed hands between PW-1 Smt. Kaushalya Jain and the three defaulters two of them were identified by PW Master Manan and one was identified by Insp. Mange Ram. The money changed hands is also corroborated by three PWs and the fact that a PCR Call has been made regarding snatching of Rs.15000/- by three Police men in plain clothes. Even the visit and attempt to extort money was highly deplorable."

5. Appeals were preferred against the order of dismissal by the applicants and the same have been rejected vide order dated 5.7.99 by the appellate authority.

6. The applicants further challenged the appellate authority's order in a revision petition. The revisional authority vide order dt. 24.11.99 modified the punishment from dismissal to a lesser punishment of forfeiture of two years service permanently for the period of two years entailing proportionate reduction in their pay. The intervening period from the date of dismissal to the date of

joining their duty has been treated as dies-non. The following directions/observations have been made by the revisional authority while modifying the punishment:-

An examination of the record of the Departmental Enquiry proceedings shows that the E.O. conducted the D.E. in accordance with rules and submitted his findings concluding therein that the allegations against the petitioners have not been substantiated. However, the disciplinary authority disagreeing with the findings of the E.O. awarded the punishment of dismissal. The pleas put forth by the petitioners in their revision petitions are accepted to the extent that the disciplinary authority has wrongly relied upon the statements of the witnesses recorded during preliminary enquiry. As per provisions of Rule-16(iii) of Delhi Police(Punishment & Appeal) Rules, 1980 "the E.O. is empowered, however, to bring on record the earlier statement of any witness whose presence can not be procured without undue delay, inconvenience or expense, if those statements have been recorded by either a superior or by a Magistrate." In this case all the witnesses have appeared during the departmental enquiry and did not support the sumerry of allegation. Therefore, the earlier statements of the PWS recorded during P.E. cannot be brought forward in the D.E. The perusal of the record do indicate some misconduct on the part of the petitioners as they had visited to the house of the complainant without any authority. Hence, the preponderance of probability of the incident does exist against them. Keeping this in view, I accept their revision petitions and modify the punishment of dismissal from service to that of forfeiture of two years approved service permanently for a period of two years entailing proportionate reduction in their pay. The intervening period i.e. from the date of dismissal to the date of joining their duty be treated as dies non."

7. The applicants have challenged the aforesaid order dated 24.11.99 before us contending that once the revisional authority has come to the conclusion that the applicants have been wrongly punished by taking into account the preliminary enquiry record, then modifying the excessive punishment to the lesser punishment on the ground that from the record some misconduct is proved on the part of the applicants regarding the visit of the house of the complainant is absolutely perverse. The learned counsel of the respondents resisted

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this plea of the applicants by referring to testimony of PW8 Inspector Mange Ram, regarding identification of the applicants, and PW3 Master Manan who had identified applicants in the presence of aforesaid Inspector. But from the perusal of testimony of PW-3 it is found that the said witness has clearly stated that the applicants are not the persons, who were present at the spot and he had not identified them. Further, when he was asked a particular question, he had replied that the persons, who were present on the spot are not present here.

8. The learned counsel for the respondents also referred to the testimony of PW-6 Saket Gupta to establish that there is an evidence on record to show that he identified the accused- applicants. From the perusal of his testimony and cross-examination, it transpired that he stated that "Out of that 3 persons one was like Ct. Jai Parkash who was previously posted to PS Shakar Pur but remaining two were not known to him." However, from the perusal of an answer of this witness to a question, he stated that due to darkness on that day he could not identify any of the delinquent-officials. We have also gone through other evidence brought on record including the evidence of complainant - Smt. Kaushalya Jain. PW2 Vinod Kumar Jain, PW4 Kamal Jain and find that no evidence had come on record to get the applicant involved with the alleged misconduct.

9. The learned counsel for the respondents also taken us to the fact that the punishment has been imposed on the basis of evidence on record i.e. the preliminary enquiry record, particularly, the enquiry report submitted by ACP (Operation Cell), Gurmukh Singh. The applicant contends that correct

procedure has not been followed by the disciplinary authority to come to a conclusion contrary to the enquiring authority. The disciplinary authority while imposing the punishment of dismissal, has relied upon, this piece of evidence including the preliminary inquiry statement. The learned counsel for the applicant referred to Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980 and contended that the statements recorded during the preliminary enquiry can be record of the departmental enquiry on certain conditions stipulated under Rule 16(3) of Delhi Police (Punishment & Appeal) Rules, 1980. According to him the witnesses were very much available and their statements have been recorded during the course of departmental enquiry. Therefore, relying upon the preliminary record and the evidence of witnesses recorded therein and also discarding the evidence recorded during the course of departmental enquiry would be against the Rule. The contention is also fortified by the order of revisional authority whereby, he set aside the order of dismissal on the ground that the same was based on the preliminary enquiry record.

10. As there is absolutely no evidence brought on the record of departmental enquiry as well as the respondents' counsel has failed to show any piece of evidence regarding the visit of the applicant's to the house of an complainant without any authority, sustaining a punishment on that ground would amount to punishing the police officer on merely conjectures and surmises.

11. According to us in the instant case the applicants have been punished on the basis of a perverse findings recorded by the revisional authority without any evidence on

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record. This view of ours is fortified by a decision of the Hon'ble Supreme Court in the case of Kuldeep Singh Vs. Commissioner of Police and Others ((1999) 2 SCC 10 wherein it has been held that -

"It is no doubt that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. Court cannot sit in appeal over those findings and assume the The role of thee appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

12. In our view, this is a case where the orders have been passed on no evidence and are perverse and the said conclusion could not have been reached by an ordinary prudent man. As such, we interfere in the matter and declare the order passed by the Commissioner of Police in revision as not legally sustainable. As a result, the order of modified punishment passed against the applicants is set aside. Applicants would be entitled to all the consequential benefits as admissible to them under the relevant Rules and instructions. No order as to costs.

S. Raju  
(Shanker Raju)  
Member(J)

V.K. Majotra  
(V.K. Majotra)  
Member(A)

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