

Central Administrative Tribunal, Principal Bench

Original Application No. 629 of 2000

New Delhi, this the 17th day of May, 2001

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

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1. Const. Bijender Singh
No. 2860/DAP (PIS No. 28884195)
R/o House No. 12,
Vill. & P.O.: Siras Pur
Delhi-42

2. Const. Naresh Kumar
No. 2677/DAP (PIS No. 28800937)
Vill. & P.O. Badkhsa Rai,
Distt. Sonepat (Haryana)

....Applicants

(By Advocate: Shri Anil Singal)

Versus

1. Govt. of NCT of Delhi
through Comm. of Police
Police Head Quarters
I.P. Estate, New Delhi

2. Addl. Comm. of Police
Armed Forces, Delhi
Police Lines
Kingsway Camp, Delhi

3. D.C.P.
IIIrd Bn. DAP: Delhi
Vikas Puri, New Delhi

....Respondents

(By Advocate: Shri Harvir Singh)

ORDER (ORAL)

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

Facts of the case are that present two applicants were put incharge of an under trial person (in short 'UTP') who was suffering from some disease and admitted in DDU hospital. The said UTP on the pretext of answering a natural call went to the toilet and after removing two thin iron bars, managed to escape from the custody of the applicants. Since it was a case of escape, an inquiry under Rule 29 of Delhi Police (Punishment & Appeal) Rules, 1980 was conducted which was a sort of preliminary inquiry. After the inquiry, the department

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had proceeded to conduct domestic inquiry under the Delhi Police (P&A) Rules, 1980 with regard to misconduct on the part of the applicants. In the disciplinary inquiry, the applicants were found guilty and punishment of forfeiture of five years approved service permanently for a period of five years entailing proportionate reduction in their pay with a further direction that they will not earn increments of pay during the period of reduction, was passed. It was also ordered that the suspension period would be treated as not spent on duty. Assailing the said order, the applicants' counsel submitted that when the departmental inquiry was started, at that stage itself, the enquiry officer had prejudged the case of the applicants and they had determined to hold the applicants guilty in the disciplinary inquiry. Learned counsel for the applicants further submitted that in such like cases when the department had prejudged the cases of the applicants, the inquiry is vitiated and in support of his contention, he referred to a judgement in the case of Hans Raj Gupta vs. State of Punjab, SLR 1992 (1) 146.

2. In reply to this, learned counsel for the respondents submitted applicants' case was not prejudged but since it was a case of escape, therefore, an inquiry under Rule 29 of Delhi Police (Punishment & Appeal) Rules was conducted and the inquiry officer was supposed to write *prima facie* finding as to under what circumstances the incident had occurred and whether the constable incharge was guilty of any misconduct or omission or not. But in any manner, it cannot be said that the respondents had prejudged the cases of the applicants in the inquiry.

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3. We have given our thoughtful consideration to the matter. The object of inquiry under rule 29 of Delhi Police (Punishment & Appeal) Rules, 1980, shall be the elucidation of all circumstances connected with the escape or rescue and the determination of the issue whether the escape or rescue could have been prevented by the exercise of such vigilance and courage on the part of the Police Officer immediately responsible as might reasonably have been expected, and whether it was rendered possible or facilitated by any neglect or omission of duty on the part of any superior police officer. Sub-rule 2 of Rule 29 provides that on conclusion of inquiry, if the Deputy Commissioner of Police finds that no misconduct is attached to the police officers or officer suspended, he shall reinstate them while sub-rule 3 of this Rule reads that "if the enquiry establishes negligence or connivance in an escape, thereby creating a presumption that an offence under Section 221, 222 or 223 I.P.C. has been committed, the police officer concerned shall be prosecuted in a criminal court, unless the Additional Commissioner of Police on a reference by the Deputy Commissioner of Police decides, for reasons to be recorded in writing that the case shall be dealt with departmentally.

4. Sub-rule 3 of Delhi Police (Punishment & Appeal) Rules, quoted above, clearly provides that the officer who has conducted preliminary enquiry, has to return a finding whether the escape was due to negligence on the part of delinquent employee or it was due to some omission on his part. So merely because of the fact that in the

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preliminary enquiry it has been held that the negligence was on the part of these two applicants, it cannot be said that the department had prejudged the case of the applicants and the regular enquiry conducted by the department was merely a farce. The findings returned by the officer who had conducted the preliminary enquiry are altogether in consonance with rule 29 sub-rule 3 of Delhi Police (Punishment & Appeal) Rules and he had statutory duty to return the finding to the effect that applicants were guilty of misconduct or not and as provided in sub rule 3. The department had chosen to proceed against the applicant departmentally and probably had not registered a case under Section 221, 222 or 223 of I.P.C. Therefore the judgement relied upon by the applicant in the case of Hans Raj Gupta vs. State of Punjab, SLR 1992 (1) 146 is not helpful to him because of the provisions enshrined under rule 29 of Delhi Police (P&A) rules.

5. Besides that, we may also mention that the record of the departmental enquiry which has been annexed with the file, shows that S.I. Vandana Rao had also stated before the enquiry officer as to how the UTP had managed to escape from the hospital and how the said witness had checked himself the spot after the escape of the UTP.

6. Though we are not to re-appreciate the evidence, but we find that there is evidence available on record holding the applicants guilty of the charge. Besides that, report of the enquiry officer also points out towards the omission on the part of constables on guard duty which prompted the E.O. to return the finding,

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holding the applicants guilty in the departmental enquiry. The disciplinary authority had also taken a lenient view and awarded the mild punishment of forfeiture of five years approved service.

7. In the result, we find no reason to interfere in this O.A. which is accordingly dismissed. No costs.

M.P.S.
(M.P. Singh)
Member (A)

K.S.
(Kuldip Singh)
Member (J)

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