15

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 700/2000

Date of Decision:29.3.2001

HC/Dvr. Phool Chand: Applicants.

(By: Shri Mrs. Avnish Ahlawat with
Shri Mohit Madan)

Versus

Govt. of NCT Delhi : Respondents

(By : Shri Ram Kawar)

Corum:

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or note ? YES/~~NO~~

2. Whether it needs to be circulated to other Benches of the Tribunal ? YES/~~NO~~

(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/

16

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

OA 700/2000
New Delhi, this the 29th day of March 2001.

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J.)
Hon'ble Shri Govindan S. Tampi, Member (A)

HC/Dvr Phool Chand
No.1343/Sec.
(PIS NO.28810465)

.....Applicant

(By Advocate Mrs. Avnish Ahlawat
with Shri Mohit Madan)

V E R S U S

1. Govt. of NCT DELHI
through
Commissioner of Police,
Delhi Police,
Police Headquarters,
New Delhi.

2. The Additional Commissioner of Police
(Security)
Delhi Police, PHQ, New Delhi

3. Addl. Dy. Commissioner of Police,
(Security)
Delhi Police,
Ashok Police Lines,
New Delhi.

.....Respondents.

(By Advocate Shri Ram Kawar)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A)

Disciplinary Authority's order dated 15.1.1999, imposing on the applicant, the punishment of forfeiture of two years approved service and Appellate Authority's order dated 7.10.99, enhancing it to forfeiture of four years' approved service are under challenge in this application.

2. The applicant, a Head Constable (Driver) of Delhi Police since 1986, was arrested on 2.8.92 and tried for an offence U/S 363 & 376 IPC, following which his services were terminated on 4.8.1992, under Article 311(2)

(17)

~~(21)~~ of the Constitution. Following his acquittal by the Additional Session Judge, Delhi on 21.4.93, he challenged his summary dismissal, in OA 2312/93, which was allowed by this Tribunal on 28.7.97, setting aside the dismissal order, but treating the applicant as under suspension. He was reinstated on 6.10.97 and summary of allegations was served on him 27.3.98. In the enquiry, as none of the witnesses, supported the prosecution case and no medical evidence was produced, the E.O. held the charge as not proved, though he expressed suspicion against the witnesses as having been won over. Disciplinary Authority, keeping in view CFSL report disagreed with Enquiry Officer and held that though the evidence was not sufficient to take drastic action, the defaulter in the face of the evidence could not go scot free and therefore imposed on him the punishment of forfeiture of two years' approved service temporarily, entailing reduction in pay by two stages , for two years . The period between 4.8.92 and 5.10.97 was treated as 'dies non' and the period of suspension as "not spent on duty". While dealing with the appeal, the appellate authority, proposed by a show cause notice increasing the punishment and after receiving the applicant's detailed reply, enhanced the punishment to forfeiture of four years of approved service for four years entailing proportionate reduction in pay and with cumulative effect. Hence this application.

3. Heard the counsel for the applicant as well as the respondents. The points raised for and on behalf of the applicant in the pleadings as well as during the hearing through the learned counsel Smt. Avnish Ahlawat are as below:

18

i) Note of disagreement with EO's report, as well as the orders by Disciplinary Authority and Appellate Authority are perverse and based on no evidence and have been passed violating the principles of natural justice.

ii) The applicant has been dealt with, on no evidence but only on suspicion. Though no misconduct on the part of the applicant has been proved, disciplinary authority had insisted on punishing him.

iii) The fact that prosecution witnesses have turned hostile does not (per se) mean that they have been won over. In fact, in the Criminal Court the judge has held that if the persons were really guilty the parents of the prosecutrix would never have spared them. CFSL report which was relevant was never examined.

iv) The authorities concerned should have confined themselves to what had happened during the enquiry and should not have been influenced by events before or after that.

v) The punishment imposed on the applicant involved three punishments i.e. forfeiture of four years' approved service, withholding of future increments and rendering of the applicant's service as dies non and not spent on duty.

(19)

vi) Suspicion, however, strong it be, cannot take the place of evidence and none can be punished on suspicion. The authorities in this case have gone against this cardinal principle as laid down by the Hon'ble Supreme Court in H.C. Goel's case 1964 SCR 718. After the applicant has been acquitted by the Criminal Court, initiating the disciplinary proceedings, on the same grounds and imposing punishment thereon were improper.

vii) Respondents have punished the applicant on the strength of CFSL report which was not among the documents produced or examined during the enquiry through any witnesses. Acceptance of such an evidence was against the directions of the Supreme Court in Ministry of Finance and Another Vs S.B. Ramesh 1998 (I) SLJ.418.

viii) Applicant had clearfly brought out in his representation to the appellate authority that the enquiry was not conducted properly and as CFSL report was not produced or examined, the Disciplinary Authority should not have relied upon it. Finding against the applicant was, therefore, based not on substantive evidence, but on hearsay, which was frowned upon by the Supreme Court in the case of Central Bank of India Vs. Prakash Chand Jain (AIR [1969] [1] SLR 735).

ix) Material witnesses having deposed that the applicant had not done anything against the prosecutrix, which was also duly accepted by the Enquiry Officer, there was no reason for the Disciplinary Authority to come to any different conclusion.

(20)

x) The mere observation in CFSL /MLC that the blood group of the applicant was the same as that was found in the garment of the victim does not automatically lead to a conclusion that he was the accused, in the absence of any other evidence. Still the respondents have gone against the applicant and imposed a heavy punishment on him without any basis.

In the above circumstances, the impugned orders deserved to be set aside and the applicant rendered justice, pleads Smt. Ahlawat, learned counsel.

4. Shri Ram Kawar, learned counsel for the respondents states that they had acted correctly in this matter. Originally after the misdemeanour was detected the respondents terminated the services of the applicant as it would have been highly delicate to bring the three and half year old child, who was the victim of the incident as a witnesses. However, they had to go ahead with the prosecution, in which the applicant got a favourable verdict, on benefit of doubt, as the main witnesses had been bought over. The respondents had gone through the DE proceedings correctly and based on the evidence like CFSL report/MLC came to the conclusion that the applicant deserved to be punished. Hence the punishments imposed. Disciplinary Authority had come to his decision, disagreeing with the Enquiry Officer, after examining the facts on record and perusing the applicant's representation and recording his legal findings. Similarly the Appellate Authority had examined the facts and imposed the higher punishment, that too after issuing a SC Notice and perusing the applicant's reply. Inspite of the

heinous nature of the crime committed by the applicant, respondents have gone through the procedures strictly before imposing the punishment on him. Applicant cannot take shelter under the technical plea that he was acquitted in the criminal case, as the acquittal was not an honourable discharge but one on benefit of doubt as the witnesses have been bought over. His plea that CFSL Report/MLC were not proved through examination was not material as CFSL report was per se admissible in courts of law, according to Sh. Kawar, the learned counsel. He also states that the Respondents' view that the witnesses would have been won over is correct, keeping in view their poor financial background and their anxiety not to aggravate the trauma of the young victim. The improper and indecent act of the applicant, whose responsibility it was to maintain law and order in the area and preserve high morals, rightly deserved to be punished heavily. The learned counsel desired that the Tribunal should not interfere in this matter. He also relied upon the decision of Rajasthan High Court in G.R. Nagori Vs UOI and Others 1980 SLJ 136, which he felt would adequately his cover their case.

5. We have carefully considered the matter. In this case, the pleadings against the applicant have been initiated after the criminal proceedings have been dismissed, having given him the benefit of doubt. The applicant plead that on the same set of circumstances disciplinary proceedings would not legally lie. This plea does not merit acceptance as the proceedings in prosecution and the departmental proceedings are two parallel proceedings and they it can run concurrently, but separately provided there is adequate proof to sustain the charges. In this case, according to the applicant there is no evidence and the main evidence on which

the Deptt. had proceeded for initiating the charges are the medico-legal evidence and the report of the CFSL. According to the applicant this was not admissible as the CFSL report have not been proved through any witness and have not been made a part of the document supplied. However, it is evident that the medical examination report and the CFSL report have been given to the applicant and they have been duly received by him under his dated signature as brought out in records. Therefore, evidently the pleas sought to be raised by the applicant cannot be upheld. The fact that the two main prosecution witnesses have continued to depose in favour of the applicant during the enquiry would also mean that they have been won over most probably as they feared repraisal and as they did not want to increase the trauma of the child. This was not a case of no evidence but of a strong medico legal evidence which was made available to the applicant, as brought out on record. The validity of the CFSL reports which is factual does not suffer merely because it was not presented through any witness. The applicants attempt to take some mileage on the ground of this alleged lacunaa deserves rejection outright and the applicant cannot get any assistance from the decision cited. In the circumstances the disciplinary authority has correctly deferred from the enquiry report and held against the applicant. The appellate order issued makes it clearer still. The relevant portion of that order is reproduced as below :-

> It has already been held by the EO in his findings about the presence of HC (Dvr) Phool Chand at the place of occurrence which is far away from his place of duty in the state of intoxication, allegation levelled by the parents of the victim girl, Reena before the local police on the day of commission of offence and registration of a Crl. case against the appellant when there is no previous history of any ill will or enmity with the victim's parents detection of same group of blood as of the victim girl Reena on the under wear as reported in CFSL report No.92-8/2950 dated 15-11-92 compelled to raise a doubt on the

(23)

conduct of the appellant. The FIR was lodged by the mother of the victim is important as this was the first deposition made by a mother of a raped victim to the police when no external pressure was applied on her. Later she had to change her version due to fear of reprisal, pressure borne by the HC (Dvr) and his other colleagues. Similarly, the enquiry conducted by the supervisory officer of the appellant fully confirm the heinous act of rape committed by him. The medical report of the Doctor, and the report of CFSL fully corroborate rape committed on the child who was recoverd from a secluded place of Public Garden alongwith the appellant. Therefore, I have no option, but to confirm the notice. The show cause notice is, therefore, confirmed and the punishment awarded to HC (Dvr) Phool Chand, No.1343/Sec. vide order No. 298-300/HAP/Sec. dated 15-1-99 is enhanced from forfeiture of two years approved service temporarily entailing reduction in his pay from two stages for a period of two years to forfeiture of four years approved service permanently for a period of four years entailing proportionate reduction in pay. He will not earn increment of pay during the period of reduction and on the expiry of this period the reduction will have the effect of postponing his future increment of pay".

The appellate authority has, therefore, come to the correct conclusion that the main witnesses had been won over by fear of reprisal. There is no reason why this should be called in question. In the circumstances of the case the enhancement of the punishment to forfeiture of four years of approved service was reasonable and lenient. We do not find it necessary or justified to interfere in this matter.

6. In the above circumstances the application has to fail and is accordingly dismissed. In the circumstances of the case, however, we order no costs.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

Patwal/