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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA.No.796 of 2000

New Delhi, this 25th day of May, 2001

HON^{BLE} SHRI KULDIP SINGH, MEMBER (J)
HON^{BLE} SHRI M.P. SINGH, MEMBER (A)

Mohd. Usman
S/o Late Shri Habib Ahmed
R/o 311-H/6 Zakir Nagar
Okhla
Delhi ... Applicant

(By Advocates: Shri Rajeev Kumar and
Shri Sachin Chauhan)

versus

1. Union of India
through Secretary
Ministry of Home Affairs
North Block
New Delhi
2. Joint Commissioner of Police
New Delhi Range
Police Headquarters
I.P. Estate
M.S.O. Building
New Delhi
3. Addl. Dy. Commissioner of Police
North East District
Shalimar Park
Delhi ... Respondents

(By Advocate: Mrs Meera Chhibber)

ORDER

Shri M.P. Singh, M(A)

The applicant has challenged the departmental enquiry order dated 5.4.1999 (Annexure A-1), order dated 6.8.1999 by which penalty of forfeiture of 2 years' service was imposed (Annexure A-2), order dated 27.1.2000 whereby the appeal preferred against the order of punishment has been rejected (Annexure A-3) and finding of

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the enquiry officer dated 6.7.1999 holding him guilty of the charge (Annexure A-4).

2. Brief facts of the case are that the applicant was appointed as a Constable in Delhi Police on 12.1.1977 and was promoted to the rank of Head Constable in June 1987. A departmental enquiry was initiated against him on the allegation of grave misconduct in that Shri Dinesh Kumar, Complainant had alleged that on 16.11.1998 his daughter Pinki, aged 5 years, was playing at Gali No.4, opposite Vaishno Devi Mandir and wall of Madhu Sharma fell on her. She was admitted in G.T.B. Hospital and on reporting the matter at P.S. Gokulpuri, no action was taken and the applicant had permitted Madhu Sharma for re-construction of wall and removed all the evidence. During the course of enquiry conducted by P.G. Cell, it was revealed that a case vide FIR No.914/98 u/s 288/337 IPC dated 4.12.1998 was registered at P.S. Gokulpuri on the statement of Shri Dinesh Kumar Sharma. The applicant kept the D.D. entry pending for 18 days and failed to take any action on D.D.No.20-A dated 16.11.1998. An enquiry officer was appointed, who completed the departmental proceedings and submitted his finding concluding that the charge levelled against the applicant is substantiated and proved beyond reasonable doubt. Tentatively agreeing with the finding of the

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enquiry officer, a copy of finding was served on the applicant on 12.7.1999 with the direction to submit his representation. The applicant submitted his representation on 20.7.1999. The disciplinary authority, after considering the representation of the applicant, the finding of the enquiry officer and other material available on departmental enquiry file, imposed the penalty of forfeiture of two years' approved service temporarily for a period of two years entailing proportionate reduction in his pay with immediate effect. The applicant filed an appeal against this order which was rejected on 27.1.2000. Aggrieved by this, he has filed this OA.

4. Heard both the learned counsel for rival contesting parties and perused the record.

5. During the course of arguments, learned counsel for the applicant submitted that a preliminary enquiry was conducted before holding the departmental enquiry and despite a cognizable offence of the removal of the evidence u/s 201 IPC, no prior approval of the Additional Commissioner of Police was taken before holding the departmental enquiry as required under Rule 15(2) of the Delhi Police(Punishment and Appeal)Rules,1980.



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6. On the other hand, the learned counsel for the respondents submitted that a case FIR.No.914/98 u/s 288/337 IPC dated 4.12.1998 had already been registered at P.S. Gokulpuri on the complaint of Shri Dinesh Kumar. There is no prima facie a criminal case against the applicant, therefore, as per Rule 15(2) of Delhi Police (Punishment and Appeal) Rules,1980, there is no need to seek approval of Joint Commissioner of Police. Thus the points raised by the applicant has no force.

7. After hearing both the learned counsel, we are unable to agree with the arguments of the learned counsel for the respondents that there is no prima facie a case against the applicant, therefore, as per Rule 15(2) of Delhi Police (Punishment and Appeal) Rules,1980, there is no need to seek approval of Joint Commissioner of Police. The summary of allegations clearly goes to show the commission of cognizable offence on the face of allegations contained therein. Learned counsel for the applicant is right in submitting that on the basis of the allegation commission of cognizable offence punishable u/s 201 IPC for removal of all the evidence has been made out.


8. Since no prior approval of Additional Commissioner of Police has been obtained in this

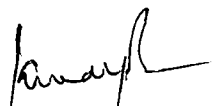
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case, the impugned orders dated 5.4.1999, 6.8.1999, 27.1.2000 and 6.7.1999 are liable to be quashed and set aside. We do so accordingly. Respondents are directed to grant consequential benefits to the applicant, within a period of three months from the date of receipt of a copy of this order.

9. OA is disposed of as above. No order as to costs.


(M.P. Singh)
Member (A)


(Kuldip Singh)
Member (J)

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