

Two Copies

10

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1535 of 1989

Date of Decision: 12.10.93

Nahar SinghApplicant.

Versus

Union of India & others Respondents.

CORAM:

Hon'ble Mr.J.P.Sharma, Member(J),

Hon'ble Mr.S.R.Adige, Member(A)

For the applicant: Shri S.M.Ratan Paul, counsel.

For the respondents: Shri Madan Mohan, Departmental
Representative.

J U D G M E N T

(Hon'ble Mr.S.R.Adige, Member(A).)

In this application, Shri Nahar Singh, a dismissed Constable in the Delhi Police has prayed for setting aside the dismissal order dated 6.5.88(Annexure-A1) and the appellate order dated 2.8.88(Annexure-A2) and prayed for his reinstatement with all consequential benefits.

2. The applicant was appointed as a Constable in the Delhi Police on 26.2.74. While posted as Main Diarist in the West District Office, the applicant appeared in 'A' list test on 12.5.78 but could not succeed, vide result declared on 8.2.79. He submitted an application on 31.3.79 requesting that he had been given 35 marks for the service record, whereas he deserved 39 marks as he had no major/minor punishment to his credit. It is alleged that on examination of his Fauji Missal and character roll, it was noticed that all the punishment pages had been detached. The Constable had received four warnings and the punishment drill four times. The index form had also been changed and repaged and certain other pages were found missing or torn. A departmental

enquiry was ordered against the applicant and one other Constable Shri Shyam Dev Sharma and an Enquiry Officer was appointed who submitted his enquiry report to the Deputy Commissioner of Police, West District. However, the Deputy Commissioner of Police did not accept the enquiry report and vide his order dated 21.1.83 remanded the case for denovo enquiry. The applicant challenged that order in the Delhi High Court but the petition was dismissed on 10.10.84, against which the applicant filed LPA No.23 of 1985 which is reported to be still pending in the Delhi High Court. As no stay was granted in the LPA, the enquiry proceeded and ultimately, the applicant was ordered to be dismissed from service vide order dated 6.5.88(Annexure-A1). The appeal was also rejected vide order dated 2.8.88 (Annexure-A2) against which the applicant has now come before this Tribunal.

3. The applicant has challenged the order of dismissal on various grounds including:-

i) At the time of alleged offence in 1979, the Delhi Police(Punishment & Appeals) Rules,1980 had not come into force and the Punjab Police Rules, 1934 were applicable and,therefore, the enquiry proceedings, issuance of charge-sheet and the impugned punishment were without jurisdiction.

ii) The alleged charge of tampering with the records is an offence under the Indian Penal Code and as such under the Punjab Police Rules, prior approval was essential before issuing a charge-sheet which was not taken and hence the impugned punishment is vitiated.

iii) The charge was not so severe as ^{to} warrant dismissal, ^{as per} and under the PPR Rules punishment could be awarded only for the gravest of ^{the} offences.

iv) Even assuming that the Delhi Police (Punishment & Appeals), Rules were applicable, prior approval of Commissioner of Police or Addl. Commissioner of Police was not taken which was essential as the alleged charge disclosed an offence punishable under IPC.

v) The order remanding the case for denovo enquiry was violative under the DP(P &A) Rules, 1980.

vi) There was an ordinate delay ^{of an} over six years in concluding the enquiry, which is not permissible under the rules framed by the DAR for the guidelines ^{for conducting} ~~of the~~ disciplinary proceedings which are mandatory.

vii) Shri B.S. Bassi, Deputy Commissioner of Police who had awarded the punishment and Dr. K.K. Paul, Addl. Commissioner of Police were neither the Disciplinary Authority/Appointing Authority nor the appellate authority in the case of the applicant and hence the order was bad in law.

4. The respondents have challenged the application in their counter affidavit and have pointed out that there is no merit in the same. They aver that the Enquiry Officer came to the conclusion that the allegations levelled against the applicant ^{AM} ~~have~~ been substantiated and agreeing with the findings of the Enquiry Officer, a show cause notice for dismissal was issued to the applicant which was subsequently confirmed on 6.5.88 and the appeal against the same was also rejected. They aver that the denovo proceedings were not initiated against the applicant but abinitio proceedings were initiated. The departmental

enquiry was instituted against the applicant under section 21 of the Delhi Police Act, 1978 and the punishment was awarded to him in the year 1988 when the DP(P & A) Rules, 1980 were in existence. The Deputy Commissioner of Police was fully competent to initiate a departmental enquiry against the applicant and there was no need to obtain approval of the Addl. District Magistrate. It has also been averred that the punishment was awarded for his graves act of misconduct as per rule prevalent at that time. It has been emphasized that there is no provision of limitation ^{AM} for period prescribed for disposal of departmental enquiry. It is averred that there is ^{NO AM} flaw in conducting the departmental enquiry, this application is ^{then for AM} fit to be dismissed.

5. We have heard Shri Ratan Paul, learned counsel for the applicant, ^{AM} ~~and~~ Shri Madan Mohan Departmental Representative, appeared for the respondents.

6. Shri Ratan Paul, learned counsel for the applicant argued that the findings were not grounded on proof, but were based entirely on suspicion and he said that mere suspicion should not be allowed to take the place of proof even in a domestic enquiry. In this connection, he cited the following rulings in support of his argument that mere suspicion was not enough to hold a person guilty of a charge even in departmental enquiry.

- i) AIR 1964 SC. 364 'Union of India Vs. H.C. Goe'
- ii) AIR 1959 S.C 1238 'Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras'.
- iii) AIR 1955 SC 271 'D.L. Girdhari Lal Vs. Comm of Income Tax, Bombay'

7. Secondly, Shri Ratan Lal argued that the order of dismissal was grossly proportionate to the

alleged offence. He stated that Rule 8 of the Delhi Police (Punishment & Appeals) Rules, laid down that the penalty of dismissal was attracted only in the cases of grave misconduct. The alleged offence in this particular case was, according to him, certainly not one which would attract such a severe penalty. Thirdly he assailed the action of the respondents because of the delay involved. He drew attention to the fact that while the incident is alleged to have taken place in 1979 and the enquiry was held in 1986 and the applicant was finally dismissed in 1988. We have considered the arguments advanced by the learned counsel for the applicant and have also perused the material on record. The concluding portion of the Enquiry Officer's report dated 8.10.87 may be extracted which reads thus ;

"The fact that the papers were removed from the character roll and the Fauji Missal of the defaulter Constable Nahar Singh No.1202/Sec. were removed has been established beyond doubt but who had removed these papers is still in dark. There is no direct evidence to prove that the defaulter had removed the papers but the circumstantial evidence that the defaulter was posted as Main Diarist in the Office of DCP West, he used to get the office opened, sitting in the office till late hours, the Fauji Missals and character roll were kept on open tables for want of almirahs indicates that the record was within his reach, force me to suspect that the papers from Fauji Missal and character roll were either removed by him or by any other person at his instance as the defaulter was the only person to be benefited why an uninterested person will do it and take a risk."

8. It is clear from the above extract that the Enquiry Officer did not find any direct evidence to prove that the applicant had removed or tampered

with the papers and ^{has} based his finding on mere suspicion. That being the position, it was not correct for the Deputy Commissioner of Police in his order dated 6.5.88 ^{to say} who ~~has~~ held that the charge of removing papers from the Fauji Missal and the Character Roll by the defaulter was fully proved. The Additional Commissioner of Police in his appellate order dated 2.8.88 has observed that

"The most relevant point that has been established is that the defaulter had access to the papers in question and was the only person to have been benefitted as a result of their tampering. In the instant case the degree of evidence is not as much as required for a judicial conviction but still I endorse the decision of the punishing authority in view of the very strong circumstantial evidence against him."

9. According to these observations, the Additional Commissioner of Police has conceded that the degree of evidence against the applicant is not as much as required for a judicial conviction but in spite of that he has endorsed the Punishing Authority's decision in view of the fact that according to him, there is strong circumstantial evidence against the applicant. However, as observed by the Enquiry Officer in his finding, the applicant has been dismissed not on circumstantial evidence but on suspicion that the papers from the Fauji Missal and Character Roll were either removed by him or any other person at his instance as the applicant was the only person who would be benefitted ^{by}. That being the position, the dismissal of a person on ground of mere suspicion must be held arbitrary and thus violative of Articles 14

and 16 of the Constitution. In this connection, the observations of the Hon'ble Supreme Court in 'Union of India Vs. H.C. Goel' (AIR 1964 SC 364), are extremely relevant which read as follows:-

"Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilt-y scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

In 'Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras' (AIR 1959SC 1238), the Hon'ble Supreme Court has observed that on no account whatever should the Tribunal (referring to the Income Tax Appellate Tribunal) base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises."

In 'Ghirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay' (AIR 1955 SC 271), the Hon'ble Supreme Court has also observed that

"When a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving its finding. Such a finding is vitiated because of use of inadmissible material and

thereby an issue of law arises".

10. In view of what has been stated above, we have no hesitation in holding that the impugned orders dismissing the applicant on ground of mere suspicion, that he tampered with his Fauji Missal and Character Roll are bad in law, arbitrary and are violative of Article 14 of the Constitution.

11. In the result, this application is allowed and the impugned orders are quashed and set aside. The applicant should be reinstated within two months from the date of issue of this order, ^{with} ~~and~~ consequential benefits, treating the period from the date of dismissal till the date of reinstatement as period spent on duty for the purposes of pension, ^{leave and} promotion ~~also~~. However, in so far as the payment of back wages for this period is concerned, the applicant will make a representation to the concerned respondents within one month of his reinstatement, who will inquire whether the applicant was gainfully employed elsewhere or not during this period, and there after pass a reasoned order on the representation.

12. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

J.P. Sharma
(J.P. SHARMA) 12/10/53
MEMBER (J)