

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 149/89

New Delhi this 10th day of November, 1993

Main Pal Singh (1834/SD)
Son of Shri Mehar Singh,
Vildllage Sayadpur,
P.O. Atali Mandi,
District Mohindergarh (Haryana)
ex. Constable in South District,
of Delhi Police ... Petitioner

(By Advocate Shri Shyam Babu)

VS VS

1. Chief Secretary,
Delhi Administration, Delhi,
5 Shyamnath Marg,
Delhi.
2. Addl. Commissioner of Police,
New Delhi Range, Police Headquarters,
New Delhi.
3. Dy. Commissioner of Police,
South District,
New Delhi. ... Respondents

(By Advocate Mrs. Advnish Ahlowat)

O R D E R

HON'BLE MR. J.P. SHARMA, MEMBER (J)

The applicant joined as Constable in Delhi Police on 16.7.1973. In September 1987 he was posted in Police Station, Delhi Cantt. He along with Shri ASI, Shadi Lal ... was served with the summary of allegations by the order dated 21.12.1987 to the following effect:-

ASI, Shadi Lal and constable Main Pal brought Kundan Singh to the Police Station from his house; he was harassed and misbehaved by defaulters; a sum of Rs. 3,000/- as illegal gratification was demanded from Kundal Lal, failing which he was threatened with arrest; and at the time he had only Rs.1000 in his possession which was extorted by them and

they warned him not to disclose this fact to anybody. The applicant pleaded not guilty and on behalf of the prosecution officer Shri Shakti Singh, Inspector examined Kundan Singh, the complainant Hari Ram, Ranbir Singh and thereafter framed the charges against the applicant as follows:

"Thereafter ASI Shadi Lal, Head Constable Main Pal Singh brought Kundan Singh brother of victim to Police Station of Delhi Cantt from his house. He was harassed and misbehaved by defaulters and a sum of Rs. 3000 as illegal gratification was demanded from Kundan Singh failing which he was threatened with arrest. At that time he had only Rs. 1000 in his person which was extorted by them and they warned him not to disclose this fact to anybody."

The applicant was placed under suspension on 8.9.1987 was reinstated in service on 15.4.1988. The applicant has produced four defence witnesses S/shri Bhanwar Singh, Rotash Singh, Naresh Kumar, constable Bhisam Singh and after appreciating the evidence of the parties the enquiry officer held that the charge against the applicant stands proved and submitted the findings to the disciplinary authority who gave show cause notice to the applicant and on considering the reply furnished by the applicant, the disciplinary authority by the order dated 19.8.1988 passed the order of punishment dismissing the applicant from service. The applicant preferred appeal against the said order which was dismissed by the order dated 8.12.1988 upholding

the order of punishment imposed upon the applicant. The applicant has challenged all these orders of imposing a penalty on the applicant and praying for quashings of these orders without consequential relief. He also prayed that the period from 9.9.1987 to 15.4.1988 be treated as period on duty. The respondents contested the applicant and in the reply passed the grant of the reliefs prayed for stating that one Devinder Singh was admitted in ESI Hospital, Moti Nagar, after he consumed some poison and on information DD No. 14A was lodged at Police Station, Delhi Cantt and it was marked for investigation to ASI Shadi Lal. The applicant alongwith ASI Shadi Lal went to the ESI Hospital on 5.9.1987 and took down the statement of Devinder Singh. The applicant alongwith ASI went to the house of Devinder Singh and brought his brother Kundan Singh to the Police Station, harassed him and demanded a sum of Rs. 3000 as illegal gratification. Shri Kundar Singh was, however, having Rs. 1000 with him which was extorted by the applicant and ASI Shadi Lal. A preliminary Enquiry was conducted by Deputy Commissioner of Police (South District), New Delhi and staff applicant and ASI Shadi Lal was put under suspension with effect from 8.9.1987. The disciplinary enquiry was instituted against both of them and as a result of which the impugned order of punishment was passed against the applicant.

We have heard the learned counsel of the parties at length and perused the record. During the course of the hearing the learned counsel for

the respondents placed before the Bench a copy of the judgement given in O.A. No. 2438/88 filed by Shadi Lal, ASI was dismissed and the relief prayed in that application of quashing the order of Punishment was disallowed. The case of ASI, Shadi Lal was similar to that of the applicant and there was common enquiry held against them. However, we are considering the rival contention in this case. The first contention of the learned counsel is that preliminary enquiry was conducted by ACP who is an officer higher in status and rank to the enquiry officer. The ACP in the findings (Annexure E) held that the allegations vide which the defaultors were suspended are correct. The contention of the learned counsel is that since the departmental enquiry was held by an officer of subordinate rank i.e., Inspector of Police so the whole departmental enquiry instituted against the applicant by the Additional Commissioner of Police by the order dated 21.12.1987 is vitiated. The learned counsel for the applicant has also referred to Rule 15(1) of the Delhi Police (Punishment and Appeal) Rules 1980 that the applicant was put under suspension after a complaint was received against the applicant and Shadi Lal, ASI on 8.9.1987. It relates to an incidence of 5.9.1987 when Devinder Singh was admitted in ESI Hospital Moti Nagar. After consuming some poison on the basis of which DD 14-A was entered was made in the Police Station, Delhi Cantt and enquiry was given to Shadi Lal. The brother of the victim Devinder

Singh was called in the Police Station, Delhi Cantt and was arrested. Since the applicant was suspended with effect from 8.9.1987, the ACP, Kalkaji Police Station, New Delhi only made a fact finding enquiry regarding the correctness of the complaint made by Kundan Singh brother of the victim Devinder Singh. It cannot, therefore, be said that ACP, Kalkaji, has committed some illegality in conducting a fact finding preliminary enquiry on the complaint made by Kundan Singh. Thus, the contention of the learned counsel that ACP, Kalkaji conducting the preliminary enquiry has vitiated the departmental enquiry against him has no basis. The preliminary enquiry report has not been relied either by the enquiry officer or by the disciplinary authority while passing the final order in the departmental enquiry. There is no error whatsoever in the procedure adopted by the administration which is squarely within the rules prescribed under the Delhi Police (Punishment & Appeal) Rules 1980. The enquiry officer, Inspector Shakti Singh or disciplinary authority were not at all prejudiced nor entered any bias against the applicant.

The next contention of the learned counsel is that the finding given by the enquiry officer Shakti Singh, Inspector is totally against the charge framed against the delinquent. The finding of the enquiry officer is that the charge against both the defaultors have been substantiated beyond doubt.

While arriving at the aforesaid conclusion the enquiry officer, Inspector Shakti Singh in the last but one para summarised the whole matter and made certain observations in a line with the evidence produced before him during the course of the enquiry. The charge against the applicant was that ASI, Shadi Lal and Constable Mani Pal Singh brought Kundan Singh brother of the victim to Police Station, Delhi Cantt and they were harassed and misbehaved by the defaultors and a sum of Rs. 3000 as illegal gratification was demanded from Kundan Lal failing which he was threatened with arrest and that he had only Rs. 1000 in his person which was extorted by them and they warned him not to disclose this fact to anybody. The emphasis of the learned counsel is that Rs. 1000 were not on the person of Kundan Singh, the Mani Pal Singh went to the house of Kundan Singh and brought Rs 1000 from the wife of Kundan Singh and Kundan Singh was kept in detention by ASI Shadi Lal for the time when the constable returned from his house. According to the learned counsel these are different versions and the charge against the applicant was not that he brought Rs. 1000 from the house of Kundan Singh. At the first instance it appears to be at variance but when analysed in the context of evidence of the witnesses examined by the Prosecution Inspector Ranbir Singh, Head Constable Hari Ram and Kundan Singh, the findings arrived at cannot be said to be in any way that evidence. In fact the charge means acquisitions against the delinquent which amounts to misconduct.

The evidence in support of the evidence though mentioned in the charge has nothing to do with the misconduct alleged against the delinquent. The evidence is of certain facts supporting the acquisitions. The basic charge against ;the applicant has been that he along with ASI Shadi Lal harassed Kundan Singh and extorted Rs. 1000 from him after demanding Rs. 3000 as illegal gratification on account of the fact that his brother Devinder Singh has consumed certain poison which resulted in admitting him in ESI Hospital, Moti Nagar. Whether Rs.1000 were with the person of Kundan Singh or they were brought from his house would not mitigate the acquisition of extorting Rs. 1000 from him. It is appreciation of the witnesses which has to be properly done on such a minor variation coming in the testimony. The witness examined Shri Kundan Singh has given his own version and he has no enmity to falsely implicate the applicant. He has stated facts which have been believed by the enquiry officer. Thus the findings arrived at by the enquiry officer to establish the charges is on the charge itself and is not a new finding.

The learned counsel for the applicant has also taken to the statement of witnesses and the conclusions drawn by the enquiry officer. The Tribunal cannot set as an Appellate Body or Authority to appreciate the evidence ,adduced before the enquiry officer. The scope of the Tribunal is to see whether there is some evidence to support the findings arrived

arrived at on the basis of admissible relevant evidence and further in such cases where the finding is perverse the Tribunal can interfere. The Tribunal can also interfere in such a case where the findings could not be arrived at by reasonable person. We find that in the present case there is consistent evidence which is admissible and relevant to the charge framed against the applicant. The enquiry officer has given reasons to arrive at the conclusion and that cannot be said to in any way perverse. Thus this is not a case where finding of the enquiry officer can be said to be tainted or perverse.

The learned counsel has also taken a number of grounds to challenge the findings of the enquiry officer and all these grounds are based on appreciation of the evidence of the witnesses. He is also taken the ground that Constable Mani Pal Singh was working under the direction of ASI Shadi Lal and as such he was bound to obey the orders of the superior officer under Section 59 and 60 of the Delhi Police Act, 1978. This argument is faulty. The applicant has given a definite rule and DD entry No. 14-A of 5.9.1988 clearly goes to show that the applicant was associated with ASI Shadi Lal in the enquiry leading to taking of poison by Devinder Singh, brother of complainant Kundan Singh. There is an overt alleged against the applicant.

The learned counsel has also assailed the order of the disciplinary authority as well as Appellate Authority that these are not the speaking orders. We have gone through the order dated 19.8.1988

(18)

passed by the disciplinary authority and he has also given a hearing to the applicant. The disciplinary authority has also considered the various points raised by the applicant in the show cause notice issued to him by the disciplinary authority on the receipt of finding of the enquiry officer. Similarly, the Appellate Authority has considered the appeals filed by the applicants and has given a speaking order dated 8.12.1988 considering the points raised in the Memo of Apperal. We therefore find that the applicant has given the fullest opportunity before the enquiry officer and again by the disciplinary authority as well as by the appellate authority. The learned counsel for the applicant could not establish that it was a case of no evidence or that adequate opportunity was not given to the applicant.

In view of the above facts and circumstances, we find that the present application is devoid of merit and is dismissed leaving the parties to bear their own costs.



(B.K.Singh)

Member (A)



J.P. Sharma

(J.P. Sharma)
Member (J)

Mittal