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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 155 of 1989

New Delhi this the 23rd day of March, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

Shri Vijender Singh
R/o Village and P.O. Ladpur,
Delhi-110081.

...Applicant

By Advocate Shri B.S. Charya

Versus

1. Commissioner of Police,
Police Headquarters,
M.S.O. Building,
New Delhi.

2. Union of India,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi.

...Respondents

By Advocate Shri D.S. Mahendru

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, an erstwhile Constable in the Delhi Police, was subjected to disciplinary proceedings under the Delhi Police Act, 1978 (the Act) and the Delhi Police (Punishment and Appeal) Rules, 1980 (the Rules). On 19.08.1988, the disciplinary authority imposed a penalty of forfeiture of ^{approved} 4 years of service of the applicant. On 30.11.1988, the appellate authority dismissed the appeal of the applicant. The two orders are being impugned in the present application.

2. The applicant was subjected to a criminal trial for an offence under Section 161 of the Indian Penal Code read with Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act. The gravamen of the charge in the criminal case was that on 25.03.1986, the applicant demanded and accepted a sum of Rs.100/- as bribe from one Shri Ram Gopal. Evidence was led by the prosecution in the criminal trial. On 05.12.1987, the Learned Special Judge, Delhi acquitted the applicant after giving him the benefit of doubt.

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3. On 21.01.1988, the Additional Commissioner of Police passed an order setting aside the order of suspension passed against the applicant and reinstated him with effect from the date of his acquittal in the aforesaid criminal trial and without prejudice to the departmental action, "if contemplated the orders of Court".

4. On 05.02.1988, the Additional Deputy Comissioner of Police passed an order that the departmental enquiry under Section 21 of the Act should be held against the applicant on the allegation that while posted at Police Post J.P.N. Hospital (Police Station Darya Ganj)^{he} had harassed one Shri Ram Gopal for ulterior motive.

5. An enquiry officer was appointed who on 02.03.1988, served upon the applicant the summary of allegations. Apparently, the applicant denied the charge levelled against him in the departmental proceedings. Thereafter, in accordance with Rule 16 of the Rules, prosecution witnesses were examined and thereafter in accordance with the said Rules, a formal charge was framed against the applicant. Since the contents of the summary of allegations and the contents of the formal charge are verbatim the same, we are refering to the contents of the formal charge, as material. The charge is that on 20.03.1986, the applicant upon the complaint of one Shri Chiranji Lal and his wife Smt. Mangia accompanied them to the house of Shri Ram Gopal and took Ram Gopal to the quarter near Ranjit Hotel. The applicant detained Shri Ram Gopal till 10.00 P.M. without any plausible reason. On 22.03.1986, the applicant again went to the residence of Shri Ram Gopal and assaulted/threatened him to put him in the lock up. Therefore, Ram Gopal was harassed by the applicant.

6. The enquiry officer concluded his report thus:

" From the evidence of PW's Chiranji Lal and Mangia it has been established that a quarrel has taken place between Mangia and Parwati. Chiranji Lal made verbal complaint to the Constables. Ram

Gopal's statement made it clear that both Constables Vijender Singh and Dharam Pal accompanied Chiranji Lal and came to his Jhuggi. He was taken to PP near Ranjit Hotel where he was detained upto 10.00 P.M. He was let off when he promised to pay Rs.100/- which were later on accepted by Constable Vijender Singh the defaulter, Smt. Parwati has also corroborated the version of his husband to the extent that the two constables accompanied by Chiranji Lal came to their Jhuggi and took his husband to Police Post who reached home in odd hours at night. This all prove that Shri Ram Gopal was harassed, detained, assaulted by the defaulter on the instance of Chiranji Lal and later on extorted Rs.100/- from him. The charge framed against him is fully proved".

7. We may at this stage note that in the charge framed against the applicant there is no mention whatsoever of Constable Dharam Pal. However, the enquiry officer has in concluded his report that the applicant and Constable Dharam Pal accompanied Shri Chiranji Lal and came to Ram Gopal's Jhuggi.

8. The disciplinary authority has recorded the following finding:

".....In this particular case the defaulter along with Constable Dharam Pal had gone to Jhuggi of Ram Gopal and a demand was made for a sum of Rs.100/-. Even though the defaulter did not say anything himself, his very presence and conduct at the Jhuggi indicates his mala fide intention".

9. Before making any comment upon the aforequoted order of the disciplinary authority, we may immediately come to the appellate order. From paragraph 1 to 3, the appellate authority has merely narrated the events. In paragraph 4 alone his findings are to be found. They are:

" I have examined his appeal and the relevant punishment papers as also the D.E. file. His plea that he cannot be awarded the instant punishment

as he has been acquitted by the Court of law on the same issue, is not acceptable as the court did not acquit him honourably but gave him the benefit of doubt. None of his other pleas inspires any belief, which are quite devoid of any force and weight. I, therefore, uphold the punishment and reject the appeal."

10. Reverting to the order of the disciplinary authority, we find that he has introduced a new story which did not find favour with the enquiry officer. The disciplinary authority did not agree with the findings of the enquiry officer that the applicant had extorted a sum of Rs.100/- from Ram Gopal. He contents himself by saying that the applicant had gone to the Jhuggi of Ram Gopal with Constable Dharam Pal and a demand was made for a sum of Rs.100/-. No overt act, according to the disciplinary authority, was performed by the applicant although he was present on the spot. The disciplinary authority, therefore, concludes ^{that} by his presence and conduct at the Jhuggi, the applicant manifested his mala fide intention. Therefore, the finding of the enquiry officer that the applicant accepted a sum of Rs.100/- as illegal gratification has been thrown over board by the disciplinary authority.

11. As regard the appellate order, the less said the better. It failed to perform its statutory duty of entering into the merits and thereafter recording his own finding after due application of mind.

12. Rule 16 of the Rules may now be considered. This separate Rule runs into several paragraphs. The substance of all the paragraphs, as material, is this. The enquiry officer shall prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice to him of the circumstances in regard to which evidence is to be recorded. If the accused officer does not admit the misconduct, the enquiry officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. When the evidence in support of the allegation is recorded, the enquiry officer shall proceed

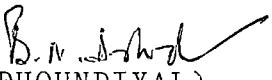
to frame a formal charge or charges in writing and explain them to the accused officer and call upon him to answer them. The enquiry officer shall proceed to record a finding. If he establishes charges different from those originally framed he may record findings on those charges provided that findings on such charges shall be recorded only if the accused officer has admitted the facts constituting them or has an opportunity of defending himself against them.

13. The purpose of the charge, as highlighted in Rule 16, is that the accused officer should know beforehand the matter which will be brought against him in the inquiry by the prosecution witnesses. Hence we have already indicated that neither the summary of allegations given to the applicant nor the formal charges levelled against him gave any hint whatsoever that the prosecution proposed to lead evidence to prove that the applicant accompanied by Constable Dharam Pal went to the house of Ram Gopal on 20th March, 1986 and took away to the Police Post near Ranjit Hotel and detained him there till 10.00 P.M. and let him off only after extracting the promise that he will pay a sum of Rs.100/-. It was not disclosed to the applicant that the prosecution witnesses proposed to disclose that on 22.03.86, the applicant again took away Shri Ram Gopal with him and released him only after extorting a sum of Rs.100/-. The discrepancy in the charge and the finding recorded by the enquiry officer, in our opinion, caused serious prejudice to the applicant in his defence. That apart, Rule 16 was observed in its breach. The disciplinary authority carved out a new case for the prosecution - different from the one accepted by the enquiry officer - and drew an inference adverse to the applicant on the basis that he silently stood by when a promise was taken from Shri Ram Gopal to pay a sum of Rs.100/-.

14. We come to the conclusion that this application must succeed. Accordingly, it is allowed. The impugned orders are quashed. The amount deducted from the salary of the

applicant in pursuance of the order passed by the disciplinary and as confirmed by the appellate authority shall be refunded to him. He shall also be paid arrears of salary on the footing that the impugned order did not come into play at all at any stage. The applicant shall be treated to be in service during the period of suspension.

15. There shall be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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