

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

1) O.A. No. 1851 of 1989

New Delhi this 9th May, 1994. (6)

CORAM:

Hon'ble Mr.C.J.Roy, Member(J)

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

1. Sh.Jaswant Singh,
s/o Sh.Ujagar Singh,
r/o NW 43D, Vishnu Garden,
New Delhi 110018.

2. Sh.Jitender Singh,
s/o Sh. Satya Pal,
r/o Barracks Police Station,
Janakpuri,
New Delhi-110058.

3. Sh.Brijender Singh,
s/o Sh.Tejpal Singh,
r/o C-84, East Gokulpur,
Delhi-94.

.....Applicants.

Versus

1. Delhi Administration
through Chief Secretary,
Sham Lal Marg,
Delhi-6

2. Commissioner of Police,
Indraprastha Estate,
New Delhi-110002

.....Respondents.

2) O.A. No. 2297/89

Sh.Jitender Singh
s/o Sh.Satyapal,
r/o Barrack Police Station,
Janakpuri
New Delhi 110058

.....Applicant.

Versus

1. Delhi Administration & one other... Respondents.

3) O.A. No. 2298/89

Shri Brijender Singh

.....Applicant

Versus

1. Delhi Administration & one other ... Respondents.

Shri S.C.Luthra, learned counsel for the applicants,
Ms. Maninder Kaur, learned counsel for the respondents.

JUDGMENT

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

As common questions of law and fact have arisen in O.A.No.1851/89 'Jaswant Singh & 2 others Vs. Delhi Administration & one other; O.A.No.2297/89 Jitender Singh Vs. Delhi Administration & one other'; and O.A.No.2298/89 'Bijender Singh Vs. Delhi Administration & one other', these O.A.s are being disposed of by a common order.

2. Head Constable Jaswant Singh and Constables Jitender Singh and Bijender Singh were charged that they went to Sidhartha Restaurant, along with two others, to take dinner on 27.1.87 at 9-30 pm. while they were posted at P.S. Tilaknagar. They asked Shri Ashok Kumar- the restaurant owner to serve them mutton in the dinner, but as it was a Tuesday, he expressed his inability to serve mutton and requested them to have chicken instead. After they had completed the dinner, when the restaurant owner asked them to pay money, they had flatly refused, on the pretext that he had not served them mutton. Therefore, they would not pay him the dinner-bill. It is further alleged that they misbehaved with the restaurant owner and even broke the glass panels of the main-gate with a stick. The copy of the imputation of allegations is at Annexure-A7. The departmental enquiry was entrusted to Inspector Shri Balwan Singh, who submitted his report on 15.5.88 (Annexure-A8), holding that the charges against the three applicants stood established. Tentatively agreeing with the Enquiry

Officer's findings, the Disciplinary Authority issued show cause notice proposing therein the punishment of forfeiture of three years approved service permanently. The applicants submitted their replies, which were duly considered by the Disciplinary Authority and they were also given an opportunity for personal hearing. Holding that the replies, submitted by the applicants, were unsatisfactory, the impugned order dated 6.10.88 was passed (Annexure-A1), permanently forfeiting three years approved service of the applicant and reducing their pay by three stages with effect from the date of issue of that order. The appeal filed by Head Constable Jawwant Singh was rejected vide order dated 1.6.89 (Annexure-A2), against which this O.A. has been filed.

3. We have heard Shri S.C. Luthra, learned counsel for the applicant as well as Ms. Maninder Kaur, learned counsel for the respondents. We have gone through the materials on record including the proceedings in the departmental enquiry which was produced for our inspection by the learned counsel for the respondents.

4. The first ground, taken by Shri Luthra, is that none of the four witnesses has either named the applicants or identified them to be the persons who allegedly committed the mis-conduct. After scrutinising the evidence tendered by the witnesses and the discussion of that evidence in the Enquiry Officer's report, we are satisfied that none of the including the restaurant owner P.W.1 Ashok Kumar P.Ws/ had either named the applicants nor identified them as the persons who allegedly committed the mis-conduct. P.W.3 Ishwar Kumar had no doubt stated in his statement that it was learnt

afterwards that the miscreants belonged to the staff(Police), but the statement is based on hearsay evidence. The respondents have sought to repel this argument by stating that P.W.1 to P.W.3 had resiled from their earlier statements which were made before ACP Shri Deepak Mishra who in his capacity as Executive Magistrate, West Delhi had recorded the statements of the prosecution witnesses in a section 107/151 Cr.P.C proceeding and also sent Head Constable Satish Kumar to verify whether the glass panels of the said restaurant had been broken or not. The respondents contend that the legal position of ACP Shri Deepak Mishra was that of a Criminal Court and the first statement made by the prosecution witnesses were those made before the said Criminal court and although the prosecution witnesses subsequently resiled from their statements in the departmental enquiry, the statements made before ACP Shri Deepak Mishra were sufficient to bring home the guilt of the applicants. We are unable to accept this contention because the charges in the departmental enquiry must stand or fall on the basis of the evidence tendered in that enquiry, ~~and~~. In the departmental enquiry, no evidence has been tendered to name or identify the applicants with the misconduct alleged. The nearest that we come to identify the applicants, is the statement of P.W.3 Ishwar Kumar, referred to above, but even that is hearsay evidence. Hence this ground taken by Shri Luthra has considerable merit.

5. Flowing from this, Shri Luthra has argued that the departmental enquiry initiated against the applicants was based on ACP Shri Deepak Mishra's report dated 3.2.87(Annexure-A5) which was in the nature of a preliminary enquiry, in which the

applicants were given no opportunity to examine or cross-examine the prosecution witnesses, and the statements of prosecution witnesses in that preliminary enquiry were, therefore, made behind the back of the applicants and, therefore, could not be taken into consideration in the departmental enquiry to hold the applicants guilty of misconduct.

6. There is no doubt that the departmental enquiry was initiated on the basis of the report dated 3,2,87 of the ACP Shri Deepak Mishra which states that he had heard Sardar Ajan Raja Singh, Ishwar Kumar and Ashok Kumar in person and sent H.C. Satish Kumar to the spot but had reported back that the glass panels of the restaurant were actually broken. The report further went to state that the statements and cross-examinations of the above three persons made it clear that the three persons had committed the misconduct, and, therefore, a suitable departmental enquiry was recommended. Thus, this report is in the nature of preliminary enquiry report. Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, states that "the file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the department proceedings when the witnesses are no longer available." In the present case, the witnesses were available and hence this latter contingency did not arise. Hence as per the rule, referred to above, the file of the preliminary enquiry was not to form the part of the departmental enquiry and yet in the present case, the statements by Sardar Ajan Raja Singh, Ishwar Kumar and

Ashok Kumar have been relied upon by the Enquiry Officer to establish the charges against the applicant, although they were not a party to that preliminary enquiry before ACP Shri Deepak Mishra. Hence, this ground taken by Shri Luthra also has merit which the respondents have been unable to repel successfully.

7. The third major ground taken by Shri Luthra is that ACP Shri Deepak Mishra himself has stated in the departmental enquiry that he had ordered H.C. Satish Kumar to make an enquiry into the alleged mis-conduct with the restaurant owner and based his report dated 3.2.87 upon what H.C. Satish Kumar had stated, believing the same to be true. In other words, Shri Deepak Mishra's evidence is not an independent, factual assessment of what actually transpired in that restaurant. The Enquiry Officer has observed in his report that Shri Deepak Mishra has been moved by the feelings of sympathy towards the applicant while making the statement and he does not place much credence on the same, preferring to rely on report dated 3.2.87. Whatever motives might have impelled ACP Shri Mishra to make that statement in the departmental enquiry, the fact remains that this statement seriously weakens the entire prosecution case.

8. No doubt in the departmental proceedings, the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt, as has been correctly noted by the Enquiry Officer in the concluding portion of his report. However, in the present case, the above analysis would show that the applicants have not been named or identified with the misconduct and whatever evidence

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has been tendered against them in the departmental enquiry is at best hearsay evidence. More importantly, the statement of ACP Shri Mishra in the departmental enquiry seriously weakens the entire prosecution case which is based upon the contents of the statements made in the preliminary enquiry, in which admittedly the applicants were not associated. There was no evidence before the Enquiry Officer to come to the conclusion that the applicants were guilty of the charges framed against them. Without any evidence, such a conclusion is bad in the eye of law.

9. Other grounds have also been advanced by Shri Luthra, but the arguments discussed above are sufficient to entitle this application to succeed.

10. In the result, the order of the Disciplinary Authority dated 6.10.88 as well as that of Appellate Authority dated 1.6.89 are quashed and set aside. The three years permanent forfeiture of service and reduction in pay by three stages of each of the three applicants are ordered to be restored, together with other consequential benefits w.e.f. 6.10.88, the date the order of punishment was passed by the Disciplinary Authority. These directions should be implemented within three months from the date of receipt of a copy of this order. No costs.


(S.R. ADIGE)

MEMBER (A)

W.S. for
9-5-94
(C.J. ROY)
MEMBER (J)

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