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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 24.12.92

OA 2132/89

DHARAM PAL

... APPLICANT.

Vs.

THE COMMISSIONER OF POLICE
& OTHERS

... RESPONDENTS.

CORAM:

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

For the Applicant

... SHRI J.P.S. SIROHI.

For the Respondents

... Ms. ANJANA GOSAI with
SHRI S.C. PURI.

1. Whether Reporters of local papers may be
allowed to see the Judgement? *yz*

2. To be referred to the Reporters or not? *yz*

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant is employed as Head Constable, and ^{was} ~~is~~ under suspension at the relevant time of filing of this application, in the Traffic Police Lines, Delhi. The grievance of the applicant is that the SHO/Inspector, P.S. Seemapuri gave adverse report for the period from 1.4.86 to 31.3.87. The applicant made a representation against this adverse report dated 13.7.87 rejecting the same by the order dated 24.11.87. The applicant in this application has prayed to expunge the adverse remarks

recorded in the ACR for the period from 1.4.86 to 31.3.87 and the order of rejecting the representation be also quashed and set aside.

2. The applicant has stated that the adverse remarks for the period under review is as follow :-

"During the period under report (1.4.86 to 31.3.87) his work and conduct seemed unsatisfactory, remained absent, he is disobedient, always tried to create problems in the staff, unfaithful, unloyal to the Government and the force."

The applicant made representation against the same on 1.4.87 (Annexure A-13), which was rejected by the DCP/East by the order dated 2.11.87 (Annexure A-14).

3. It is stated that the adverse report conveyed to the applicant is unjustified, perfunctory, illegal and vague and is not based on material whatsoever available with the Reporting Officer. The Reporting Officer was biased, prejudiced and under undue and illegal influence of Shri V. Rajagopal, the then DCP/East, who was against the applicant and the applicant had made representations on the basis of entries in the Daily Diary for registering the case against the then DCP/East Shri V. Rajagopal under Section 7 of the Protection of Civil Rights Act, It is further averred in the application that the applicant was never found wanting in any manner in the performance of his duty.

4. The respondents contested this application and it is stated in the reply that the applicant came on transfer from

5th Bn. DAP to East District and remain^{ed} posted at Police Station Seemapuri for the period from 9.4.86 to 5.2.87.

While he was posted at Police Station Seemapuri he lodged He remained absent from duty from 28.8.86 to a D.D. entry No.7-A on 25.8.86, 14.10.86 and 11.12.86 to 4.6.87 unauthorisedly and also approached the Press to

publicise the subject matter relating to above mentioned

D.D. No.7-A. A Departmental Enquiry was initiated against unauthorised the applicant for absence w.e.f. 29.8.86 to 14.10.86 on the conclusion of the oral inquiry and his three years approved service was forfeited permanently by the order dated 11.1.89 and his absence period w.e.f.

29.8.86 to 14.10.86 was decided as leave without pay. He was a habitual absentee and another departmental enquiry was initiated against him which is under progress. In view of the above facts, S.H.O. Seemapuri has given the adverse report for the period from 1.4.86 to 31.3.87 and the Reviewing Authority agreed with the said report. His representation against adverse report was rejected by the DCP. It is the case of the applicant that the Reporting Officer in order to please and help the then DCP/East Shri V. Rajgopala, made entries in the Annual Confidential Roll without any basis.

5. It is further stated by the respondents that the Supervisory Officer under whom the applicant was working has given instructions/directions to the applicant from time to time during his posting under the Reporting Officer. The Reporting Officer opined that the applicant is indisciplined and also creating problem in the Police Station intentionally.

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6. In the rejoinder, the applicant has reiterated the contention raised in the Original Application. It is further stated that the applicant was never given any instruction or direction from time to time.

7. I have heard the learned counsel for the applicant and for the respondents. The adverse remarks given to the applicant for the period under review 1.4.86 to 31.3.87 has been given by the immediate Supervisory Officer of the applicant. It is immaterial whether the applicant was ^{not} awarded any punishment during the period under review. The applicant has projected the case that on 25.8.86 when he was working as Duty Officer at Police Station Seemapuri, the then DCP/East Shri V. Rajagopala got infuriated and hurled filthy and abusive language against the applicant and also invoked his caste on telephone. This conversation was recorded by the applicant in the Daily Diary bearing No.7A dated 25.8.86 (Annexure A-3). It is said to be the basis of giving adverse remarks to the applicant. On the basis of making this entry in the Daily Diary, the applicant was issued a charge-sheet on 8.12.86. ~~XXXXXXXXXX~~ on 11.2.87 by the applicant. ~~xxxxxxx237xxxxx~~ A complaint was made to the Addl. Commissioner of Police regarding certain misbehaviour attributed to the DCP/East. In this complaint it is also stated by the applicant that the enquiry order dated 9.12.86 is illegal. It also appears from the record that on 21.10.86 a complaint was also addressed to the Director General of Police by the

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applicant (Annexure A-5). Though, Shri Dayanand, Inspector, has been made a party as respondent in the case but no separate reply has been filed by the Reporting Officer. The applicant has also taken his matter through the Commission for SC/ST, Ministry of Home Affairs, thus it is evident from the record that in the period under review the applicant was not pulling on well with the DCP Shri V. Rajgopala.. In this context, the remark of the Reporting Officer have to be judged. Firstly, the entry is regarding work and conduct being unsatisfactory. The second remark is that he remained absent. The third is that he is disobedient and always tried to create problems in the staff and, lastly, that he is unfaithfull and unloyal to the Govt. and force. These remarks have been agreed to by the Addl. Commissioner of Police, as a Reviewing Officer. In the counter it has been stated by the respondents that the applicant has made an entry in D.D. No. 7A regarding certain conversation of the DCP/East on telephone in which the applicant has alleged to have been misbehaved and rebuked.. This fact of the applicant, therefore, by itself amounts to an act of disobedience because making an entry in Daily Diary without the due approval of the SHO or without bringing the matter to the notice of the Station Incharge, the approach by the applicant cannot be said to be in line with the subordinate staff of a disciplined force. The applicant has himself filed certain complaints made to higher authorities against the DCP. The Daily Diary is not meant for recording such conversation unless it relates to day to day functioning at the Police Station.

If such matters are recorded in the Daily Diary by the subordinate staff who is at the time of such communication happens to be present at the Police Station as a Duty Officer then it will under mine the discipline of the Police force itself. The allegations levelled by the applicant cannot be gone into these proceedings. Nor an inference can be drawn regarding the correctness or incorrectness of the talk the DCP had on telephone with the applicant. The remark, therefore, by the Supervisory Officer, SHO, that the applicant is disobedient and always tried to create problems in the staff cannot be said to be without any basis.

8. Regarding the performance of the applicant during the period under review the applicant has been absenting himself for ^{ly} ~~sufficient~~ long period. Though the applicant had justified his absence on account of his illness and has also filed his certain certificates of treatment but the fact remains that the applicant was not attending to his duty and therefore the ^{remark} ~~the~~ that the work was unsatisfactory cannot be found fault with. This remark of unsatisfactory work has been also correlated by the Reporting Officer that he is remaining absent from duty. The other remark given to the applicant is about his conduct

The conduct of the applicant was watched by the superior officers. A Govt. employee is expected to act decently both when on duty as well as when he is not on duty. The conduct of the applicant by making an entry in the DD-7A which is admitted to him, itself goes to show that he was overjealous and excited and has forgotten that he is a subordinate employee of the disciplined force. If the higher officer ^{allegedly} has acted in a highly arrogant manner with his subordinate then there are various other courses open to such a subordinate employee. The subordinate employee has not to lose his temper or get excited. He has to keep patience and pursue the matter departmentally particularly in the force to which the applicant belongs. The applicant remained absent from duty unauthorisedly though may be on medical rest frequently but he should have given intimation or obtain permission from the Competent Authority. When he has been deputed as Duty Officer, he has been entrusted with higher responsibility and being aware of that if the applicant has to remain either on sick leave or on account of any important work or could not attend to his work he has to give due intimation for his absence.

9. It has been clearly averred in the counter that the applicant has been given instructions and directions during this period. Though this fact is denied in the rejoinder but it cannot be said that

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the immediate Supervisory Officer would not have instructed or guided his subordinate when occasion arose.

10. The learned counsel for the applicant during the course of the arguments has also referred to a Circular issued by the Cabinet Secretariat dated 20.5.72 for writing confidential report. Though it is a fact that reference to specific incidents will be made by way of illustration to support adverse comments of a general nature, for example inefficiency, dilatoriness, lack of initiative or judgement etc. In the present case, however, the averment made in the Original Application itself goes to show that the applicant has acted in a manner not expected of him by making certain entries in Daily Diary regarding certain conversation on telephone conveyed to him. Further, in the aforesaid circular it is also mentioned that the Confidential Reports recorded by different departments from time to time. Thus, it cannot be said that the report given by the SHO in the prescribed proforma was in any way in breach of the said circular.

11. The learned counsel for the applicant also argued that his representation against the aforesaid adverse remarks has been disposed of by a non-speaking order. While deciding a representation the Competent Authority has to apply its mind

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to find out whether the Reporting Officer has given the remark on the basis of actual performance of the particular employee during the period under review. However, the rejection by a non-speaking order will not wash[✓] out the adverse remarks as held by the Hon'ble Supreme Court in UOI Vs. E.G. Namboodari (1991 (2) SCR 675).

12. The allegation of malafide against the Reporting Officer, SHO, Shri Dayanand is that in order to please the DCP/East, the aforesaid remark was given to him by the Reporting Officer. This farfetched idea cannot be expected in view of the facts given on record. The applicant has also been pursued in a departmental inquiry. The respondents in their counter have also averred about the earlier conduct of the applicant but that is not material in deciding the present application.

13. The learned counsel for the applicant also argued that it is only after 25.8.86 when the applicant ^{was} disliked in the performance of his work and earlier to it the efficiency of the applicant was not adversely commented upon. I have gone through the personal file of the applicant, this statement of fact given by the learned counsel for the applicant cannot be said to be substantiated by the available material on the personal file of the applicant.

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

Jomane 24.12.91
(J.P. SHARMA)
MEMBER (J)