

(u)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.248/89

NEW DELHI THE 22ND DAY OF APRIL, 1994.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Prabhu Dayal,
Asstt.Sub-Inspector
Office of the Deputy Commissioner
H.No.569/18
D.A.V.High School
Khandra Road
Om Nagar
Gurgaon(Haryana) ...

APPLICANT

BY ADVOCATE SHRI G.R.MATTA.

Vs..

- 1.The Commissioner of Police
Delhi Police,
Police Head Quarters
M.S.Building, I.P.Estate
New Delhi.
- 2.Additional Commissioner of Police
New Delhi Range
Police Headquarters
M.S.Building, I.P.Estate
New Delhi.
- 3.Deputy Commissioner of Police
West District
New Delhi.

.... RESPONDENTS

BY ADVOCATE SHRI B R PRASHAR
ORDER(ORAL)

JUSTICE S.K.DHAON:

The applicant, an Assistant Sub-Inspector in the Delhi Police, was subjected to disciplinary proceedings under the Delhi Police Act, 1978(the Act) and the Delhi Police(Punishment & Appeal) Rules,1980(the Rules). On 23.9.1987, the Deputy Commissioner of Police, acting as the disciplinary authority, imposed a punishment upon the applicant of reducing him by three stages entailing subsequent reduction in his pay from Rs.1380/-per month to Rs.1320/- per month in the time scale of Rs.1320-30-1560-EB-40-2040 permanently with effect from the date of issue of the order. On 20.7.1988, the Additional Deputy Commissioner of Police, acting as the appellate authority, dismissed the appeal of the applicant. The two orders are being impugned in the present OA.

2. On 18.2.1986, a summary of allegations was served upon the applicant. The substance of the allegations is that the applicant while working as HAG in the office of the Deputy Commissioner of Police/Palam Airport had induced Woman Sub-Inspector Parveen Giri to pay him a sum of Rs.1000/- on the assurance that he would not bring the matter regarding her occupation to the notice of the authorities concerned Government quarter at Timarpur by her / and will get without bringing her House Rent Allowance stopped / to the notice of the senior officers. Parveen Giri aforementioned had paid Rs.1,000/- to the applicant in the presence of S.I. Sukhpal Singh and Bhim Singh posted at Palam Airport, New Delhi. When the applicant did not help her, she demanded her money from him which he refused to give with the plea that he had been served with a show cause notice for sitting over the papers of House Rent unnecessarily. The above act of the applicant showed his misconduct and the dereliction in the discharge of his official duty which is liable for departmental action under Section 21 of the Act.

3. We may at once note that in the summary of allegations, there is not even a whisper of either the exact date on which the sum of Rs.1000/- was allegedly paid by Woman SI. Parveen Giri to the applicant or the approximate period during which the said payment was made to him(the applicant). Since the fate of this case turns upon the appreciation of the evidence of Woman Sub-Inspector Parveen Giri, S.I. Sukhpal Singh, and S.F. Bhim Singh, we may at once refer to the depositions of the three witnesses, as analysed in the inquiry officer's report.

4. Before considering the evidence, we may note ~~that~~ is the department's case/that the motive of payment of sum of Rs.1000/- by Woman SI Parveen Giri

SAC

to the applicant was that he would see to it that no action is taken against her on account of the fact that she continued to occupy a Government quarter at Tirmarpur and continued to draw the House Rent Allowance.

5. We have before us, the communication dated 9.2.1983 of the Deputy Commissioner of Police, Delhi Airport to the Deputy Commissioner of Police, Headquarters (II), Delhi. The subject of this communication is the recovery of H.R.A. from W/SI Parveen Giri. It is stated therein that W/SI Praveen Giri was allotted a Government quarter by Police Headquarters while she was posted in Old Police Line. Accountant/Old Police Line has shown that she was drawing House Rent Allowance in her Last Pay Certificate, so the House Rent Allowance is not being recovered from her pay. A request is made that a copy of the allotment order vide which Woman SI Parveen Giri was allotted a quarter may be supplied to that unit for further necessary action.

6. On 17.2.1983, a communication was issued by the Deputy Commissioner of Police, Delhi Airport to the Inspector, Control Room, Shift 'B'. The subject of this communication is the recovery of House Rent Allowance from Woman SI Praveen Giri. It is recited therein that Woman SI Praveen Giri may be directed to furnish the following information in respect of her Government accommodation to Acctt/ Branch, PAP, immediately:-

- (1) Allotment order No.
- (2) Type of Quarter No. and No. with place.
- (3) Date of occupation of Quarter.

7. Then, we find the Accountant/Palam writing for and on behalf of the Deputy Commissioner of Police, Delhi Airport, on 3.3.1983 and inquiring

(7)

under the decision taken by the Police Headquarters regarding the recovery of House Rent Allowance from Woman SI Praveen Giri.

8. These documents show that proceedings had been initiated against Woman SI Praveen Giri on 9.2.1983. There is nothing on record to suggest that ~~WSI~~ Praveen Giri / acquired knowledge of these proceedings on or after 9.2.1983. We find from the communication of the Deputy Commissioner of Police, Delhi Airport, New Delhi dated 9.2.1983 to the Deputy Commissioner of Police, Headquarters(II) that a copy of that communication was ~~enclosed~~ endorsed to ~~the~~ Accountant/Palampur HRA stating therein that the payment of House Rent to ~~WSI~~ Parveen Giri Allowance/ may be stopped with immediate effect ~~an order of~~ and /total recovery of House Rent Allowance was ~~to~~ be passed later on, after the receipt of a copy of the allotment order from the Police Headquarters. The second endorsement is to the In charge, Shift 'B' for directing Woman SI Praveen Giri to supply the particulars of the Government quarter in her possession immediately. In these circumstances, and in the absence of any material to the contrary, it should be presumed and assumed that Woman SI Praveen Giri acquired knowledge of the said communication dated 9.2.1983 either on 9.2.1983 or soon thereafter.

9. We find that the inquiry officer has quoted the statements of one of the two star witnesses, SI Bhim Singh, in the preliminary inquiry. The quotation, as relevant, runs thus:

"Some time in March-1983 S.I. Parveen Giri paid Rs.1000/- to ASI Prabhu Dayal in my and S.I. Sukh Pals's presence....."

10. We may examine the depositions of three witnesses as paraphrased by the inquiry officer in his report. Woman SI Parveen Giri stated that from the year 1980 to 1983 she remained posted at Palam Airport. She was allotted a Government quarter at Timarpur when she was posted at Old Police Lines. At Palam Airport, she saw the pay packet of one of her friends and found that the amount mentioned therein was less than the pay she drew though both of them were in possession of a Government accommodation. She mentioned this fact to the applicant. The applicant told her that it is a cause of concern that she is drawing House Rent Allowance while in possession of a Government quarter and for this lapse she could be punished as it is a case of embezzlement of Government money. The applicant told her that 2/3 years' service could be forfeited in this case. She asked the applicant to suggest some ways and means through which recovery is made from her without any punishment being inflicted upon her. Applicant agreed to it. She talked to SI Sukhpal Singh in this connection who told her that the applicant is a good friend of his and he will discuss with him. After 2/3 days, the applicant and SI Sukhpal Singh told her that the work required Rs.1200/- and she agreed to pay the said sum to the applicant in a day or two, provided she is not punished. Accordingly, she paid Rs.1000/- to the applicant in the domestic passenger hall in the presence of SI Sukhpal Singh and SI Bhim Singh after 2/3 days. The applicant told her not to disclose this fact to anybody else. After 1½ months she received a show-cause-notice which was issued to her in connection with the H.R.A. Then, she asked the applicant to return her money as she had been punished but the applicant failed to do so. During cross-examination, she stated that

she could not tell the exact date or month when she compared the pay of her friend in PAP but stated that it was in the year 1983. She filed an application for stoppage of House Rent Allowance in the month of Feb/March 1983. She could not tell the exact date since when her H.R.A was stopped.

11. Now we come to the testimony of Inspector Sukhpal Singh. He stated that he was posted at Palam Airport as Sub Inspector in 1982-83 and he was working in searching/frisking staff. Woman Sub Inspector Parveen Giri was also posted in their shift.

She, one day gave a packet to the applicant in domestic transit hall. He did not know what that packet was containing. He did not see with his own eyes, any transaction of money between the applicant and Woman Sub Inspector Parveen Giri.

During cross examination, he admitted that he never saw Woman Sub Inspector Parveen Giri meeting/talking to the applicant. He did not tell her that the applicant is well-known to him. He witnessed the said packet being delivered by Woman Sub Inspector to the applicant in the year 1982, but he could not remember the date, time and month. He further stated that, in fact, it was a folded four time full size/scrap paper but he did not know what it was containing. At the time of handing over of the folded paper to the applicant, no one except he was present

Jy

there. On being cross examined by the inquiry officer, this witness stated that he could not assign any reason as to why Woman Sub-Inspector Parveen Giri had mentioned in her statement that Sub Inspector Sukhpal was present at the time of handing over Rs.1000/- . He also could not make out any reason as to what/ meant by handing over a simple paper. However, it is correct that she passed on one folded piece of paper to the applicant in the Domestic Passenger Hall. The discrepancy between the statement given by him before the inquiry officer and in the preliminary inquiry was pointed out to him by the inquiry officer. He admitted that his former statement(in the preliminary inquiry) did not contain any mention of the folded paper.

12. We now come to the statement of Sub Inspector Bhim Singh. He was posted at Palam Airport in the year 1983. Woman Sub Inspector Parveen Giri was also deployed in 'B' shift. She did not give any money to the applicant in his presence. He was pressurised by the then Deputy Commissioner of Police/Palam to depose against the applicant. There was no transaction of money between Woman Sub Inspector Parveen Giri and the applicant in his presence. During cross / by the inquiry officer, the witness admitted that his statement was recorded during the preliminary inquiry. He was confronted with the statement given by him in the preliminary enquiry. That statement was quoted in the inquiry officer's report to the effect:

"Some time in March-1983, W.S.I Parveen Giri paid Rs.1000/- to ASI Prabhu Dayal in my and S.I. Sukh Pal's presence. On my enquiry W.S.I Parveen Giri told me that this amount has been paid by her to ASI Prabhu Dayal for proper disposal

of her case regarding the payment of House Rent to her when she had been in occupation of Govt. accommodation in Timarpur. She subsequently told me that ASI Prabhu Dayal had taken away the amount but had not helped her out in any way."

He stated that he made the statement in the preliminary inquiry on 11.11.1983 under pressure from Sh. Balwant Singh, the then DCP/Palam Airport. DCP/Palam was not present at the time of recording of the statement.

13. The inquiry officer, after referring to the statements of the aforesaid three witnesses and relying upon the statements made by them in the preliminary inquiry, had recorded a finding that the charge had been brought home to the applicant.

14. The question to be examined is whether the statements recorded in the preliminary inquiry could be used at all against the applicant and if yes, to what extent. To put it differently, whether the statements of a witness given in the preliminary inquiry can be used as a substantial piece of evidence. We have already indicated that one of two key witnesses, namely SI Sukhpal Singh merely stated before the inquiry officer that he saw some packet being passed on by Woman Sub Inspector Parveen Giri to the applicant. We have already pointed out that another witness, SI Bhim Singh, in his examination-in-chief, categorically denied that he ever saw any money being passed on by Woman Sub Inspector Parveen Giri to the applicant. We have already indicated that he gave the statement in the preliminary enquiry under duress.

12

15. Rule 15 of the Rules, inter-alia, provides that a preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identify the defaulter.(ii) to collect prosecution evidence,(iii) to judge quantum of default and (iv)to bring relevant documents on record to facilitate a regular departmental enquiry. The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the enquiry officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer.All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by the enquiry officer.

15. Here, we have already indicated that three star witnesses actually deposed in the proceedings before the inquiry officer. Therefore, the question of their being not available so as to attract the provisions of Rule 15 did not arise. It follows that their statements could not be brought on record so as to form part of the departmental enquiry. As a corollary, the statements of the said witnesses recorded in the preliminary enquiry cannot be and should not be used as a substantial piece of evidence. At the most, the said statements can be used for a limited purpose of contradicting the testimonies of the witnesses deposing before

the inquiry officer. In the present case, we find that if the statements recorded in the preliminary enquiry are excluded, there is hardly any corroboration of the testimony of Woman Sub Inspector Parveen Giri. It has to be remembered that Woman Sub Inspector Parveen Giri categorically stated that she paid a sum of Rs.1000/- to the applicant in the presence of SI Sukhpal Singh and SI Bhim Singh. SI Bhim Singh had totally denied this fact. However, SI Sukhpal Singh had contented himself by saying that he saw some envelope being passed on to the applicant.

16. The testimony of SI Sukhpal Singh at the most, creates a suspicion. However, suspicion does not take the place of proof. Therefore, even in departmental proceedings, a particular charge cannot be brought home to a delinquent servant on a mere suspicion.

17. Barring the uncorroborated testimony of Woman Sub Inspector, there is no other material upon which it can be held that she paid a sum of Rs.1000/- to the applicant. It is on record that the said Woman Sub Inspector was subjected to disciplinary proceedings on the charge that she had paid a sum of Rs.1000/- to the applicant and in those proceedings she was awarded the punishment of a mere censure. The counsel appearing for the respondents has shown as the order of the punishing authority imposing the aforesaid punishment upon the Woman Sub Inspector Parveen Giri. The possibility of Woman Sub Inspector Parveen Giri making a false accusation against the applicant to ward off the danger of the disciplinary proceedings being initiated against her on account of the fact that she had continued to draw House Rent Allowance in spite of the fact that she continued to occupy the Government accommodation

is not ruled out. There is no suggestion in the case that any disciplinary proceedings were taken against her in that behalf. On the contrary, there is material to indicate that steps were taken to realise the amount paid towards House Rent Allowance from her. In these circumstances, taking an overall view of the testimony of Woman Sub Inspector Parveen Giri, we do not consider her evidence as of probative value. If that be so, this case will fall under the "no evidence rule".

18. This OA succeeds and is allowed. The orders of the disciplinary authority as well as the appellate authority are quashed.

19. There shall be no order as to costs.


(B.K.SINGH)
MEMBER(A)

SNS


(S.K.DHAON)
VICE-CHAIRMAN(J)