

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

DA 882/1989

NEW DELHI, this 23rd day of March, 1994

Shri C.J. Roy, Hon'ble Member (J)
Shri P.T. Thiruvengadam, Hon'ble Member (A)

Shri Mohinder Singh
s/o Shri Sish Ram
r/o Village & PO Kasar P.S. Bahadurgarh
Dt- Rohtak, Haryana .. Applicant

By Shri Ajit Singh Grewal, Advocate

Versus

1. Lt. Governor of Delhi, through
the Chief Secretary, Delhi Admn.
Delhi
2. The Commissioner of Police
Delhi Police Hqrs.
MSO building, IP Estate, New Delhi
3. Addl. Commissioner of Police (Armed Police)
Delhi Police Hqrs., MSO Building
IP Estate, New Delhi
4. Dy. Commissioner of Police
1st Bn. D.A.P., New Police Lines
Kingsway Camp, Delhi .. Respondents

By Shri O.N. Trisal, Advocate

ORDER

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

The applicant is aggrieved by the dismissal order dated 25.11.87 (Annexure 'D') passed by the DCP 1st Bn, DAP, Delhi, and the orders dated 22.4.88 (Annexure 'E') and 21.2.89 (Annexure 'F') rejecting his appeal and revision petition, respectively.

2. Briefly stated, the facts of the case as alleged by the applicant while he was posted as Constable/Drill Instructor with the Delhi Police at the Jharoda Kalan Training Centre, Delhi, was proceeded against departmentally for his misbehaviour with Inspector Prem Chand on 28.10.85, as a result of which he was dismissed from service by order 12.6.86. He made an appeal against the same and he was reinstated by order dated 6.11.86. However, the depart-

in another case
mental enquiry was reopened, he was charge-sheeted, found guilty of the charge by the Enquiry Officer and was again dismissed from service by order dated 25.01.87. His appeal to the appellate authority was rejected and also his revision petition to the Commissioner of Police was not entertained being time-barred. Hence this OA praying for quashing all the three orders mentioned in para 4 herein above.

3. The respondents have filed their counter denying the allegations made in the OA. They say the applicant misbehaved, abused and assaulted Inspector Prem Chand in his office on 1.4.86 amounting to indiscipline, he was placed under suspension and a regular departmental enquiry was ordered by order dated 1.4.86 entrusting the same to Inspector O.P. Yadav. However, that enquiry was closed and consigned to record by order dated 18.7.86 inter alia stating that the enquiry would be reopened in case the applicant is reinstated at any later stage. Also the departmental enquiry was closed because of the dismissal of the applicant from the force on 12.6.86 as a sequel to an another case. Consequent upon his appeal to the Addl. Commissioner of Police(R), the applicant was reinstated in service from 12.6.86 by order dated 6.11.86 and the applicant resumed his duty on 14.11.86, treating the period from 12.6.86 to 13.11.86 as L.K.D. On reopening of the departmental enquiry, it was entrusted to Inspector Sukhbir Singh and the applicant was deemed to be placed under suspension with effect from 14.11.86. The applicant appeared before the Addl. Commissioner of Police(T) on 22.12.86 in his orderly room, who reinstated him from suspension by order dated 26.12.86, after which the

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applicant was transferred to 1st Bn DAP by order dated 9.1.87 vis-a-vis transferring the departmental enquiry to the Dy. Commissioner of Police 1st Bn, DAP for completion, by the instructions of ACP(T) vide order dated 5.2.87 and entrusting the enquiry to Inspector Bhalu Ram by order dated 20.3.87. The findings of the enquiry officer dated 9.10.87 concluded that the applicant misbehaved, abused, caught Inspector Prem Chand in uniform and tried to assault him with chair and that the charges stood fully proved. The Punishing authority, after carefully going through the findings and other relevant papers, came to the conclusion that the misconduct of the applicant was too grave to render him completely unfit for retention in a disciplined force and therefore the applicant was dismissed from service by order dated 25.11.87, treating his suspension period from 14.11.86 to 25.12.86 as not spent on duty. The applicant's appeal to the appellate authority, after the same was gone through carefully, was rejected by order dated 22.4.88. On receiving that order, the applicant made a revision petition on 6.6.88, which was not entertained on the ground that the revision petition was being time-barred as it was filed after the expiry of limitation period as provided in PPR 16.32 and also because that the applicant had not mentioned any cogent reasons justifying the delay.

4. We have heard the counsel for the parties and perused the records, including the departmental file leading to the dismissal of the applicant from service.

5. The case of the applicant/^{is} that Inspector Prem Chand felt insulted on the reinstatement of the applicant and therefore he was instrumental in getting the departmental

enquiry reopened and one of the PWs specifically stated that the applicant misbehaved with Prem Chand but the enquiry officer solely depended upon the statement of Prem Chand, an interested PW, that led to his dismissal. He alleges that he was made to perform miscellaneous duty than that of Drill Instructor. He further alleges that he was transferred thrice to PTS, Jharoda Kalan as Drill Instructor and he was deliberately detailed by Prem Chand for guard duties which he was not expected to perform. His contention is that he instigated the Inquiry Officer Inspector Bhalle Ram, who never examined all the DWs furnished by the applicant, just to throw him out of service.. He therefore alleges that the conclusion of the enquiry officer is vague and perfunctory, based on which no punishment can be awarded.

6. The respondents have denied the above allegations categorically stating that the applicant was earlier dismissed in ~~an~~ another case and the case against which he had made this petition was closed earlier in which the punishing authority mentioned that "it would be reopened in case the said constable is reinstated in service". On ~~an~~ his reinstatement, the departmental enquiry was reopened and the applicant was placed under suspension with effect from 14.11.86. From the findings of the Inquiry Officer and other relevant records, the charge against the applicant stood proved upon which he was dismissed from service. They say that the Inquiry Officer examined all the PWs produced by the applicant, gave ample and reasonable opportunity to the applicant but the applicant avoided joining the enquiry on one or other pretext. They deny of any pressure

on the Inquiry Officer by Prem Chand or the conclusion of the Inquiry Officer is vague or perfunctory as the same was supported with evidences.

7. It is also the case of the applicant that he was not issued with any show cause notice proposing the penalty enabling him to make representation, and that he was not called upon as to why the suspension period not be treated as not spent on duty, thus taking away his fundamental rights. He has questioned the amendments introduced by the authorities in this connection. He has further challenged the validity of the authority imposing the punishment as the departmental enquiry, according to him, was not conducted as per provisions of Rule 14(4) of the Delhi Police (Punishment & Appeal) Rules, 1980,

8. The respondents while refuting the above allegation, say that ~~the~~ after the amendment of Rule 16(xiii)(c) and Rule 17 of the Delhi Police (Punishment & Appeal) Rules, 1980, there is no need to issue show cause notice and the disciplinary authority can pass orders imposing any penalty as specified in Rule 5 of the above said Rules. They urge that as per Rule 14.4 of the said Rules, when a departmental enquiry is under process, it is not necessary that the defaulter is to be posted under the same disciplinary control.

9. = The applicant's contention that he was not supplied with the copies of the relevant documents to enable him cross examine the PWs in an effective

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manner and the authorities were bent upon in dispensing with his services by not transferring the departmental enquiry to the North District where he was posted, the respondents urge that the applicant was afforded full opportunities to cross examine the PWs and to take notes as required under Rule 16(iii) of the above referred Rules but his plea for transferring the departmental enquiry was not justified. They further categorically state that the applicant, during his entire service had failed to maintain good conduct and discipline required in Police Force.

10. About the applicant's allegation that the orders of the appellate authority and punishing authority to be that of 'non-speaking' in nature, that the rejection letter was conveyed to him on 7.5.88 against which he made a revision appeal on 6.6.88 which was well within the time, the respondents urge that the said orders do not suffer any ambiguity as his appeal was rejected after discussing the points raised by him. They ~~the~~ say the rejection letter was despatched on 22.4.88 by Regd. AD but the applicant intentionally avoided its service about four times as per the version of the Post Man.

It is relevant, in this regard, to mention here Rule 24 of the Delhi Police (Punishment & Appeal) Rules, 1980, which reads as under:

"An appeal which is not filed within 30 days of the date of receipt of the original order, exclusive of the time taken to obtain the copy of the record, shall be barred by limitation. The appellate authority may, however, accept an appeal which is barred by limitation, if in his opinion the delay occurred due to circumstances beyond the control of the applicant. If there are reasons to believe that an officer is evading receipt of an order, the period of one month shall be counted from the date of despatch of the order by the registered post acknowledgement due"

Admittedly, the letter in question was despatched by the Respondents on 22.4.88 by Registered AD, which the applicant intentionally avoided to receive. So, on this count the applicant fails.

11. In this case, on our direction English translation of the depositions were given to us and we have gone through the same. Prem Chand, who is examined as PW-1, categorically states that the applicant has entered his room breathlessly and asked about some application belonging to him. Then the applicant cried out "What?". At this point of time, one Narain Singh was also present in his room. Prem Chand says that the applicant abused him, went out, again entered his room and started throwing a chair on his head. Two more constables also came out after hearing the noise, these witnesses were not cross examined, even though an opportunity was given to the applicant. On this deposition, the signatures of the applicant, Prem Chand and EO are there.

12. The learned counsel for the applicant argues that basing on the sole testimony of PW-1 without any corroboration, the applicant can not be punished. He has also relied upon the judgements in TA 190/86 dated 12.8.86 - ATR 1988(1)-CAT-65 - holding that "Even in the departmental inquiry satisfactory evidence must be placed to conclusively come to a finding that the charge has been brought home against the delinquent officer" and in OA 1637/90 dated 14.12.93 holding that "No reliance, therefore, can be placed upon the testimony of interested witness". But ~~there~~ there is no corroborative piece of evidence. Here ^{we} will demonstrate the law of corroboration.

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13. PW-1 evidence is not cross examined though a chance was given to the applicant, that means he has accepted the version of that evidence. Secondly, in the deposition of Narain Singh, he says that the applicant entered into the room of Prem Chand twice and called his superior as "Aey" and asked about his application. He further says to a question of cross examination that "not going out of office despite his direction, amounts to the unmannerliness". This corroborates the presence of the applicant in the room of Prem Chand that the applicant entered his room twice, asked about his application and went out in unmannerly way. Here, there is however no cross examination as to what is unmannerliness. We are not however bothered because sometimes the witnesses try to be smarter by speaking only such portion thereby thinking that they are helping both the sides so that they would not come into trouble from any source. Even then, he categorically states that the applicant entered the room twice. Constable Ramesh Chand, PW-3, also says in his deposition, ~~says~~ that the applicant was in the room of Prem Chand but he did not cross-examine him. Daya Ram, PW-4, says that he heard a loud noise of quarreling from the office of RI (Prem Chand). The applicant also cross-examined him who was not an eye witness.

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14. In the light of the statement of DW-1, though opportunity was given but not cross-examined by the applicant, Narain Singh stating that the applicant entered the room twice, called him "Aey" and went out in unmannerly way, and PW-4 stating that he heard a loud noise of quarrelling from the office of RI, all these corroborates the evidence of PW-1. Therefore, the evidence of Prem Chand, which is corroborated on certain important aspects, goes to show that a serious incident must have taken place in the room of the RI by virtue of behaviour of the applicant. So, believing his evidence with the corroboration, we fail to see how the above quoted judgements by the applicant's counsel are applicable here.

15. Under the writ jurisdiction, we are conscious of the facts that we are not an appellate court to reappraise the evidence. If two views are possible on same facts and if one view is taken by a lower authority, a different view, though possible, can not be taken by the superior authority. That apart, if Prem Singh is an interested witness, his evidence has to be carefully examined. Since his evidence has been corroborated on principal points, the plea of evidence of sole witness is not fatal to the case. We are conscious of the fact that quality of evidence is important than the quantity of witnesses.

16. It is unimaginable in a disciplinary force how a subordinate officer goes to the room of his superior and creates a scene.

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17. The applicant has failed to cross-examine Prem Chand, though opportunity was given to him. He could have put a question or two to prove the motive was to falsely implicate him. However this question is not there, though motive is a double edged weapon. We fail to see how Prem Chand has given false evidence, as there is no presumption in the law that prosecution witnesses speak falsehood, whereas the same rule can not be applied to defence witnesses.

18. Therefore, we do not see any reason to interfere in this case. The applicant has failed to make out a case for our interference. Therefore, the application is dismissed, with no order as to costs.

P. T. Thiruvengadam
(P.T. Thiruvengadam)
Member(A)

23/3/94
(C.J. Roy)
Member (J)

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