

8

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A.NO. 1034 OF 1989:

DATE OF DECISION: 7-8-1991.

Shri Het Ram

.. Applicant.

v.

The Commissioner of Police
Delhi and another.

.. Respondents.

CORAM:

Hon'ble Mr. G. Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr. S. Gurusankaran, .. Member(A)

Shri Sunil Malhotra, counsel for the applicant.

None for the respondents.

S. GURUSANKARAN, MEMBER(A):-

JUDGMENT

The applicant who was initially appointed as Sub-Inspector in the Delhi Police and later promoted as Inspector, was proceeded against departmentally for certain alleged misconduct by the issue of charge sheet at Annexure-A. After the completion of the departmental inquiry, the Disciplinary Additional Commissioner of Police Authority ('DA' for short) issued a show cause notice (Annexure-A-C) along with a copy of the Inquiry Officer's report (Annexure-A-B) proposing to award the penalty of reduction in rank from Inspector to Sub-Inspector. After considering the reply of the applicant to the show cause notice vide Annexure-A-D, the DA imposed vide Annexure-A-E the penalty of forfeiture of his three years' approved service permanently entailing reduction in his pay proportionately, but counting the three years service forfeited as qualifying service for pension. The applicant submitted an appeal (Annexure-A-F) to the Appellate Authority ('AA') Commissioner of Police. The AA rejected the same vide his order dated 25-2-1989 (Annexure-A-G). Aggrieved by the same, the appli-

48

cant has filed this application praying for quashing the orders of the DA and AA and the report of the Inquiry Officer with consequential benefits.

2. We have heard the counsel for the applicant and carefully perused the records before us. The learned counsel for the applicant stressed the following points during the hearing:

(i) He mentioned that the prosecution case is mainly based on the statements of an accomplice to the alleged misconduct. The other witness to the incident, even though not belonging to the department, is also related to the accomplice. He referred to KUMARI RATNA NANDY v. UNION OF INDIA AND OTHERS ATR 1986 (2) CT 247 and argued that "an accomplice is unworthy of credit unless corroborated in material particulars". We find that Kumari Ratna Nandy's case is distinguishable in that no action was initiated against the main witness in the case, even though he was an accomplice and personally committed the crime of interpolation. In this case, the accomplice has been dismissed from service. ^{Possibly} ~~and~~ ^{the testimony of} there is ^{the} ~~submissio~~ ^{submissio} ~~merit in~~ ^{the} ~~testimony of the~~ ^{the} ~~reliance can~~ ^{be placed on} ~~the~~ witness, ^{the} ~~who~~ is related to the accomplice, ~~who has also been taken up.~~

(ii) The counsel for the applicant next argued that there was a serious lacuna in the inquiry in that it was held as a joint inquiry both against the applicant and the accomplice. He pointed out that for reasons stated in the application, the accomplice was revengeful and to save his own skin in the joint inquiry, he made out the false story to malign his image. He further argued that the charges against them were also different. We are not able to agree with this contention, since in a departmental inquiry when the main offence is the same, joint inquiry is provided for in the Rules, even though the actual charges would be different depending upon their actual involvement in the misconduct. We asked the counsel to

point out to us as to under which Rules such joint inquiries are prohibited and also as to whether he had protested against the joint inquiry, before the inquiry started. He could not show us any material in this connection and only referred to para 4 of his reply to the show cause notice after the inquiry, wherein the applicant had pointed out that no credibility can be placed on the deposition of the accomplice for reasons stated therein. Hence, this contention has to fail.

(iii) The next important point stressed by the counsel for the applicant was that the Inquiry Officer's report is to be rejected since he had not taken into account the facts brought out by the defence witnesses, but mainly based his findings on the facts brought out by the prosecution witnesses. He vehemently argued that from the statement of the defence witnesses, it was clear that the applicant was not at all present at the site of the alleged misconduct. The counsel took us through the various statements of the witnesses. We find that this is not a case of no evidence and the Supreme Court in STATE OF MAHARASTRA AND ANOTHER v. MADHUKAR NARAYAN MURDIKAR [1991 (1) SLJ 1647] have held that re-appreciation of evidence by High Court as if it sits in appeal against the decision of the departmental authority is unsustainable. We also find from the Inquiry Officer's report that it has taken into account the statements of the defence witnesses. Apart from this, it has been brought out that the applicant sustained injuries and remained on medical rest and treatment from the date of ^{the alleged incident, i.e.} episode 4-2-86 to 5-6-1986. The DA has also gone into all the aspects and recorded that during the personal interview granted in the ^{room} orderly ~~room~~, the applicant had admitted the mistake and ~~would~~ like to be pardoned. Hence, as long as the findings are based on some evidence, the proper procedure has been followed and Rules of natural justice have not been violated,

this Tribunal cannot interfere with ~~the~~ findings and
cannot sit as a Court of appeal to reappreciate the
evidence.

3. In the result, the applicant has to fail and the
application is dismissed.

Upankar
1/8/1991
MEMBER (A)

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7-8-1991
VICE-CHAIRMAN.