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

O.A. NO. 20/1988

DATE OF DECISION : 7.2.92

SHRI BRAHAM SINGH

...APPLICANT

VS.

COMMISSIONER OF POLICE & OTHERS ...RESPONDENTS

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SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

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

FOR THE APPLICANT

...SHRI B.S. CHARYA

FOR THE RESPONDENTS

...SHRI JAGDISH VATS

1. Whether Reporters of local papers may be allowed to see the Judgement? H
2. To be referred to the Reporter or not? J

JUDGEMENT

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

The applicant, who was posted as Assistant Sub Inspector, Delhi Administration under Deputy Commissioner of Police, East Delhi filed the application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the orders of suspension/punishment dt. 13.1.1983 and dated 12.1.1986 passed by the Deputy Commissioner of Police, East Delhi; the order passed in appeal on 16.2.1987 by the Additional Commissioner of Police, Delhi; and the order dt. 20.8.1987 passed by the

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Commissioner of Police finally awarding the punishment of forfeiting 10 years' approved service entailing reduction of pay from Rs.390 p.m. to Rs.330 p.m. and treating the suspension period from 13.1.1983 to 2.3.1984 being treated as not spent on duty.

2. The applicant has claimed the following reliefs :-

- (a) To quash the impugned order of suspension dt. 13.1.1983, order of punishment dt. 12.1.1986 as well as the order passed in appeal and revision dt. 16.2.1987 and 30.8.1987 respectively.
- (b) Declaring the applicant to be entitled to be restored to basic pay of Rs.390 with all attendant benefits and future increments.
- (c) Respondents be directed to pay the difference in pay and allowances for the alleged period of suspension from 13.1.1983 to 2.3.2984.

3. The facts are that the applicant is confirmed Assistant Sub Inspector since 1976. The applicant was placed under suspension by the order dt. 13.1.1983 as he defaulted in investigating a case under Section 306 IPC. He was served with a memo dn 9.6.1983 containing summary of allegations along with a copy of FIR No.193 dt. 27.6.1982 and DD entry No.17 dt. 27.6.1982 under Section 452/506 IPC. Shri Upendra Nath Sharma, Inspector was appointed Enquiry

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Officer. The said Enquiry Officer was transferred and his place was taken by Shri Surender Kumar Sharma as the Enquiry Officer.. Subsequently Shri S.K. Sharma, Inspector, Enquiry Officer was also transferred and the enquiry was entrusted to Shri Amar Singh, SHO, Shakarpur. According to the case of the applicant, the SHO, Amar Singh did not himself hold the enquiry, but asked one Shri Lakshmi Narayan, Sub Inspector to record the statement of some of the witnesses at their residences in the absence of the applicant. The applicant was not provided an opportunity to cross-examine those witnesses. The charge was framed against the applicant by Shri Amar Singh on 25.1.1985 charging the applicant with the allegation that on 27.6.1982, DD No.7, Police Station Patparganj lodged by Shri Sardari Lal Malik was marked to him for investigation when he was posted at the said police station and that without verifying the facts, he registered a false case vide FIR No.193 dt. 27.6.1982 under Section 452 IPS, P.S. Kalyan Puri against Shri S.C. Vij etc. Shri Sardari Lal Malik is accused in a case FIR No.167 under Section 306 IPC. It is also alleged that without verifying the facts and proper investigation, he prepared the challan of case FIR No.193/82 under Section 452 IPC within 5 days to favour Sh.Sardari Lal Malik etc. The

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Deputy Commissioner of Police issued a show cause notice on 14.8.1985 enclosing a copy of the Enquiry Officer's report in which the applicant has been held guilty of the charge mentioned in the statement of allegations and the disciplinary authority was of the view to forfeit permanently 10 years' service of the applicant entailing in reduction in his pay and treating the suspension period as not spent on duty. This punishment is upheld by the appellate as well as the revisional authority as said above. The applicant assails the findings of the Enquiry Officer on the ground that there is no evidence against him; that statement of witnesses were recorded not by the Enquiry Officer Amar Singh, but by Sub Inspector, Laxmi Narayan and the statement of most of the witnesses were recorded in his absence without affording him an opportunity of cross examination; he also said that the challan report was forwarded by the SHO, Patparganj. Thus it is said that the enquiry proceedings were not held properly.

4. The respondents contested the application and stated that on 27.6.1982, DD No.17 of PS, Patparganj was marked to the applicant for investigation. He reached the spot and without verifying the facts, registered

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a false case vide FIR 193 dt. 27.6.1982 under Section 452/506 IPS, PS Kalyan Puri against Shri S.C. Vij etc., the relatives of the deceased Gaeta Malik (daughter-in-law of Sardari Lal Malik) in order to favour Shri Sardari Lal Malik etc., who were accused in the case FIR No.107/82 under Section 306 IPC. He submitted the challan of the case within five days without proper investigation of the case. The applicant was issued a show cause notice by the disciplinary authority and he was also heard in person on 18.10.1985 after which the disciplinary authority passed the impugned order dt. 12.1.1986. The appeal and revision against the order have been disposed of by the speaking order. It is also stated in the reply that the opportunity to cross-examine the Prosecution Witnesses (PWs.) was given, but the applicant did not avail of the same. It is also stated that the disciplinary proceedings were initiated against the applicant with fair mind and on the allegations which were proved during vigilance enquiry. The various allegations of not giving fullest opportunity to the applicant to cross-examine the witnesses- Thomas Methew and that the statement of the PWs. is recorded by Constable Jai Bhagwan is denied. It is, therefore, prayed that the application be dismissed.

5. We have heard the learned counsel of both the parties at length and also perused the departmental file.

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It is not disputed that the challan report submitted by the applicant through the SHO under Sections 504/506 IPC in FIR No.193/82 was finally dropped on the final report submitted by the CBI. The allegation against the applicant is that he in collusion with Sardari Lal Malik, father-in-law of the deceased daughter of Shri Vij, submitted the false challan report in the said FIR and DD entry No.17 on 27.6.1982. The applicant was suspended and an enquiry was instituted against him. The applicant moved an application before the Enquiry Officer for supply of certain documents on 11.7.1982. From the departmental enquiry file, it is evident that statement of some of the witnesses, particularly of Smt.S.K.Jacob goes to show that they did not state full facts, but only stated that she agrees with the statement given by her husband, Thomas Mathew. The Enquiry Officer, Inspector Amar Singh in the report dt. 6.7.1985 concluded only in one paragraph, which is reproduced below :-

"From the statements of P.Ws. and D.Ws., it is evident that allegations made against the defaulter are proved to full extent. All the P.Ws. have deposed that they were not on fault and case against Mr.S.C.Vij, Smt. Aruna Kumari Vij and her brother was registered with the understanding of Sardari Lal Malik. Therefore, case FIR No.193/82 under Section 452/506 IPC was got cancelled. The statements given by the DWs. are all after thought and were given due to that favour which was shown by the defaulter to Mr.Sardari Lal Malik etc. Therefore, it is of no thought and use. All the statements were recorded in the presence of defaulter and full opportunity was given to him to cross-examine the DWs. and PWs. Therefore, allegations made in the charge are fully proved."

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This finding does not discuss at all the statement of the witnesses here relied upon and the statement of the defence witnesses which he thought are not reliable.

The disciplinary authority also in para-3 has dealt with the matter summarily and did not refer to the evidence which can be relied upon to hold the applicant guilty of the charge. Not only this, the previous records of the applicant were also taken into account, though he had not been referred to about this in the imputation of charges or in the show cause notice. Similarly in the appeal filed by the applicant, the Additional Commissioner has only given a very succinct reasoning without referring to any of the witnesses' statement, which is as follows :-

"I have examined his appeal and record of departmental enquiry file. I find that the charges have been fully proved against him during the course of departmental enquiry proceedings. It has been established that he took a hasty action to favour the accused party and his action was not bonafide. He deliberately and malafidely registered a false case with ulterior motive which was later on got cancelled on an enquiry made by the vigilance branch. I, therefore, find no reason to interfere with the punishment order which shall stand. His appeal is hereby rejected."

6. The allegation against the applicant charged was that in collusion with Sardari Lal Malik, he instituted a false challan against the father of the deceased Geeta Malik under Section 504/506 IPS on the DD entry

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No.17 of 27.6.1982. This challan report was submitted by him in 5 days. Though promptness can be praised, but here there are allegations that in order to throttle the earlier registered case of FIR 107/82 under Section 306 IPC in which Sardari Lal Malik, his son were accused for the death of Geeta Malik. So the enquiry was instituted on the very severe allegations that the false challan has been instituted to pressurise the father of the deceased girl. Though a number of witnesses have been examined and there is clear allegation by the applicant that he has not been given an opportunity to cross examine the witnesses, but from the record it is evident that the applicant did cross examine witnesses as in some of the statements of the prosecution witnesses, it is mentioned that the applicant was given an opportunity to cross examine the witness. However, it is evident from the departmental file as well as the various documents filed by the applicant as annexures to the Original Application, ^{that} some of the witnesses have only dictated the statement earlier recorded in their presence and there is also allegation that the statements of the witnesses have been recorded at the residences while the applicant was not present at that time. It was for the

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Enquiry Officer himself to write down the statements and after giving an opportunity to the delinquent employee of crossexamining the witnesses and taking into account the defence and the defence witnesses of the delinquent employee, there should have been appraisal of evidence to come to a definite finding by a very speaking reasoning. That is missing in this case. The matter is a serious one, but it has not been taken up in the right perspective by the Enquiry Officer as the Enquiry Officers were changed at least twice and one of the Enquiry Officers, Shri Amar Singh, SHO took the help of SI Laxminarayan in getting the statements recorded.

7. The learned counsel for the applicant fully force^{fully} argued that there is no procedure where the statements^{can be} recorded by the person other than the Enquiry Officer and secondly, the irregular procedure of not examining each and every witness on oath, has been adopted by the Enquiry Officer. Thirdly, it is also argued that the orders passed by the disciplinary, appellate and revisional authority are orders without giving any reasoning and the disciplinary authority has jumped to the conclusion, though there was voluminous^{defence} evidence which had to

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be appreciated as there are two FIRs in this case, one of suicide of Geetha Malik and the other of Surrender Nath Malik, the father of the deceased.

8. It is also a fact that some of the witnesses only dictated the statement earlier recorded without being examined at length by the Enquiry Officer. The statement of Sant Kumar Sharma shows that he has adopted the statement of Aadarsh Kumar Nyer, PW-7, and Smt. S.K. Jacob adopted the statement of Shri Thomas Mathew. It is not evident from the Enquiry Officer's report whether he has placed reliance on the statement of these two witnesses or not as there is general statement in the report that PW's statement has been perused. In view of these facts, the impugned order of punishment suffers from a serious flaw on account of irregular procedure having been adopted by Enquiry Officer. Further there is no appraisal of the evidence in the right perspective discussing statement of each and every witness whether it should be relied, believed and whether it helps in believing or disbelieving the charges levelled against the delinquent employee. As referred to above, neither the finding is arrived ^{at} cogently by the Enquiry Officer nor the disciplinary authority and the appellate authority have provided rational for their orders. In the circumstances, the punishment order passed on

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the basis of the Enquiry Officer's report by the disciplinary authority or by the appellate authority or by the revisional authority cannot be sustained.

9. The application is, therefore, allowed. The impugned orders referred to above in para-1 of the judgement are quashed and set aside and the applicant shall be deemed to have not been punished at all by the impugned orders. However, the respondents shall be free to initiate de novo enquiry proceedings against the applicant under the Delhi (Appeal and Punishment) Rules, 1980 after furnishing the necessary memo and examining the witnesses in presence of the applicant after giving due opportunity for testing the credibility of the witnesses by cross examination. An opportunity of personal hearing may also be given, if so desired by the delinquent official before imposition of penalty by the disciplinary authority. The disciplinary authority should complete all these proceedings within twelve weeks from the receipt of the copy of this order.

10. If the enquiry is not commenced de novo against the applicant, he shall be entitled to all the benefits of pay and allowances as well as the counting of the period of suspension as spent on duty and shall also get balance of salary for that period. In case, the de novo

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enquiry is held against the applicant, the applicant shall be governed by the final orders passed by the disciplinary/appellate/revisional authority and he shall be at liberty to challenge such orders, if still aggrieved and if so advised.

J.P. Sharma
(J.P. SHARMA)
MEMBER (J) 22/92

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)