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In the Central Administrative Tribunal
Principal Bench, New Delhi

OA-192/88

Date: 11.6.93

Shri Suresh Kumar Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri J.P. Verghese, Advocate

For the Respondents Shri Satish Kumar, S.I.

CORAM: Hon'ble Mr. I.K. Rasgotra, Administrative Member
Hon'ble Mr. J.P. Sharma, Member (Judl.)

1. To be referred to the Reporters or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member)

The applicant was served with a summary of allegations dated 30th March, 1987 while he was posted as Constable at P.S. Nabi Karim, Central District, Delhi. The allegation against the applicant has been that on the night between 29/30 January, 1987 at about 1.00 a.m., he trespassed into the jhugi of one, Shri Zahirudin Sheikh and molested his wife, Smt. Badnoor Bibi. This act of the said Constable amounted to gross misconduct, unbecoming of a Police Officer, making him liable for disciplinary inquiry under Section 21 of the Delhi Police Act, 1978. The applicant was put under suspension earlier under order dated 2nd February, 1987. Under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980, it had been decided to proceed against him departmentally rather than filing a criminal prosecution against him. The applicant was proceeded departmentally and the Enquiry Officer, Inspector Sarjeet Singh, framed the charge against the applicant on 12.5.1987 and submitted his findings dated 17.6.1987 to the

disciplinary authority. The disciplinary ^{authority} issued a show-cause notice to the applicant dated 26.7.1987 as to why he should not be dismissed from service and the period from 30th January, 1987 to 20th August, 1987 be not treated as 'not ^{spent} on duty'. After considering the reply submitted by the applicant, the Additional C.P., Central District, Delhi, passed the impugned punishment order dated 21.8.1987 imposing the punishment of removal from service and treating the aforesaid period from 30.1.1987 to 20th August, 1987 for all purposes 'not ^{spent} on duty'. The applicant preferred a departmental appeal against the said punishment order which was dismissed by the appellate authority by the order dated 20.10.1987.

2. It is against the above orders of removal from service that the present application has been filed on 20th January, 1988 claiming the relief for quashing of these orders as well as the other orders passed for initiation of departmental proceedings against the applicant, appointment of the Enquiry Officer, the summary of allegations, and the memo. of charges served upon the applicant. The respondents contested this application and in the reply, opposed the grant of the relief sought by the applicant on the ground that the applicant has been guilty of gross misconduct unbecoming of a Police Officer. The departmental proceedings were held according to the extant rules giving the applicant adequate and sufficient opportunity in the proceedings. The applicant has no case and the application is liable to be dismissed.

3. The first contention of the learned counsel for the applicant is that the alleged misconduct amounted to a criminal offence under Section 354 I.P.C., the Commissioner of Police should have taken a decision with an open mind whether to proceed departmentally or under departmental

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Delhi
enquiry as envisaged in Police (Punishment & Appeal)
Rules, 1980. The Additional Commissioner of Police (Delhi)
is empowered under Rule 15 in (2) of the aforesaid Rules *to decide*
whether a criminal case should be registered or a depart-
mental enquiry should be held. In view of this specific
statutory provision in the punishment rules, there is no
illegality in proceeding against the applicant in a depart-
mental enquiry. The departmental proceedings on this account,
cannot be said to be either illegal or not in conformity with
the rules. In fact, the departmental enquiry cell has been
constituted for the purpose of quick disposal of departmental
enquiry under the supervision of the D.C.P., but all the
proceedings are conducted on the directions of the disciplinary
authority under which the Police Officer was working. In fact,
the conclusion to proceed under the departmental rules was
reached
proceeded by an earlier preliminary enquiry under Rule 15
(3) of the aforesaid rules. Thus, it cannot be said that
on this account, the departmental proceedings commenced
against the applicant, are illegal or against the rules.

4. The second contention of the learned counsel for
the applicant is that the punishment order had been passed
by the Addl. D.C.P., while the D.C.P. is the appointing
authority. The learned counsel for the applicant argued
that the Addl. D.C.P. is subordinate to D.C.P. and in view
of this fact, any order passed by the Addl. D.C.P. cannot
be equated with the order to be passed by the D.C.P. Under
Rule 4 of the aforesaid Rules, the appointing authority of
the Constable is also Addl. D.C.P. Further, D.A.D. notifica-
tion No.F.10/5/76(Home) (P) (Estt.) dated 6.5.1976 is clear
on the point regarding the powers of Addl. D.C.P. The
learned counsel has tried to draw an analogy regarding the
powers and functions of D.C.P./Addl. D.C.P., but in view of

notification quoted above, there is no difference whatsoever. When Addl. D.C.P. is the appointing authority, he is equally competent to award the punishment. In this case, the applicant was dealt with departmentally under the order of Addl. D.C.P./Central District, Delhi, who is the competent authority as provided in the rules. This contention also of the learned counsel has no force.

5. The learned counsel further contended that this is a case of no evidence and copies of certain documents have not been supplied to him. In the present case, there was undisputably a preliminary enquiry and admittedly, the applicant was not a party to that. However, on the basis of the preliminary report, a full-fledged enquiry was ordered to be held under the orders of the Additional D.C.P. and summary of allegations was served on the applicant. The preliminary enquiry report has not been relied upon by the Enquiry Officer, Inspector Sarjeet Singh, while giving his findings on the basis of the evidence given before him. The Enquiry Officer has confined his findings only to the evidence oral, documentary, which has come before him in the course of the enquiry proceedings. Therefore, the contention of the learned counsel that the statement recorded during the course of the preliminary enquiry or that the report of the preliminary enquiry was not furnished to him, has no substance. Along with the summary of allegations, the applicant has also been served with the memo. of evidence and the list of documents which has been furnished to him. In fact, there is an endorsement on the representation of the applicant dated 8.4.1987 (Annexure 5) given to the Enquiry Officer which reads that all the copies of the statement of witnesses and documents have been supplied. The defaulter is directed to mention the specific document a of which copy has not been given to him. A copy of the report of the

preliminary Enquiry Officer will not be supplied to him. After this representation by the applicant, no further request was made to the Enquiry Officer which goes to show that the applicant had been supplied the memo. of evidence as well as the documents which were required to be produced in the departmental inquiry against him. The applicant, therefore, cannot be said to have been prejudiced on this account. The learned counsel, however, has referred to some authorities in support of his contention, but those authorities are not relevant to the fact in issue as the applicant has been supplied all the relevant documents and the statement of witnesses who were to be examined against him. The learned counsel for the applicant, during the course of the argument, did not in point, accept the report of the preliminary enquiry as the document which had not been supplied to him. In fact, the preliminary enquiry has been conducted under Rule 15(1) of the Rules. That is solely for the satisfaction of the disciplinary authority before passing an order for holding disciplinary proceedings against the delinquent. Thus, it is not made out from the submissions of the learned counsel for the applicant as well as from the departmental file placed before us by the respondents that the applicant has not been given the relevant documents or memo. of evidence produced during the course of the enquiry.

6. As regards the contention that this is a case of no evidence, we have no hesitation to observe that the woman, Smt. Badnoor Bibi, has herself implicated the applicant as the person who entered the place where she was sleeping and molested her. The other witnesses also supported this fact. From the perusal of their statements in the departmental file also quoted in the findings of the Enquiry Officer, there

remains no doubt that the applicant was spared because he was having his identity card and because of this identity card taken in possession by the husband of the aforesaid lady, he was taken to the Police Station. In the defence statement, the applicant has taken a case that he went to make water at about 12.30 a.m. and found that the husband of the aforesaid woman was drunk and abusing. He, therefore, took that person to a jhugi and when he reached near a tea shop, and in a small quarrel that took place between him and a drunk person, Zahirudin, his identity card fell down. This identity card was taken by one, Shri Nurudin. At this stage, he accompanied all these persons assembled there to the Police Station. The S.H.O., in the meanwhile, came there and his identity card was produced. All these facts have been considered by the Enquiry Officer. The Enquiry Officer has also considered the evidence of the defence witnesses, Rakesh Kumar, Smt. Krishna Devi, Smt. Nathu Devi, Shri Dharma, Shri Babu Lal, Shri Brij Mohan, Shri Dharamvir, Shri Gopi Chand, produced by the applicant. The Enquiry Officer also examined Shri Nurudin as a court witness. The Enquiry Officer also had taken into account the written statement dated 4.1.1987 submitted by the applicant under his signature. The Enquiry Officer had considered the testimony of the defence witnesses and had come to the conclusion that the charge regarding applicant's entering the jhugi of Zahirudin and molestation of his wife therein and being overpowered by those persons, has been established. In the findings, the Enquiry Officer also held that the charge regarding beating of Zahirudin, Mohd. Karoom, Lal Mohd., etc., at the Police Station before the arrival of the S.H.O., is also proved. This is corroborated by the injuries received by Shri Mohd. Karoom, as stated by Dr. K.L. Sharma, M.D., examined as PW-8.

Thus, it cannot be said that there is no evidence against the applicant.

7. As regards the fact of appreciation of evidence by the Enquiry Officer, the Tribunal cannot assume the function of an appellate authority. The Tribunal can only go into the correctness of the findings to the extent whether there was evidence and that the conclusions drawn by the Enquiry Officer are not perverse.

8. We have read the statements of all the witnesses examined in this case from the departmental file and the cross examination has been done by the applicant in quite detail. We have also gone through the statements of the defence witnesses examined by the applicant in support of his defence. On a careful scrutiny, we have no reason to interfere with the findings arrived at by the Enquiry Officer which could be arrived at by a reasonable person. The contention of the learned counsel, therefore, in this regard that there is no correct finding against him and the charges are not proved, is not substantiated.

9. The learned counsel for the applicant also contended that the Enquiry Officer has, in his findings, only referred to the various statements of the witnesses examined by him and has not properly analysed those statements. In fact, the findings given by an Enquiry Officer cannot be expected to be on the same pattern as are given in a court case. The Enquiry Officer had discussed the evidence of the defence witnesses and on that basis had drawn his conclusions.

10. The learned counsel for the applicant also argued that the applicant had preferred an appeal dated 27.8.1987 against the punishment order in which he has taken a number of grounds. The appellate authority has dismissed the appeal only by certain observations in para.5 of the order dated 19.10.1987. It is, therefore, argued that the appellate

authority, i.e., Addl. Commissioner of Police, did not apply its mind. On a perusal of para.5, it appears that the appellate authority has referred to the witnesses examined, particularly Smt. Badnoor Bibi and her husband (PW1 and PW2) and also gone through the various reports and the findings of the Enquiry Officer. In the grounds taken by the applicant, it is only in para.(iv) that the applicant stated that the findings of the Enquiry Officer are based on presumptions and not on facts. This has been considered by the appellate authority. He has also taken the ground that defence witnesses were not considered by the Enquiry Officer. The appellate authority had observed in the order that he had thoroughly checked the punishment order in the light of the evidence and, moreover, the evidence of the prosecution has to be examined in the light of the allegations whether that is believable or not. The other grounds only state certain facts. Thus, it cannot be said that the appellate authority had not applied its mind. The contention of the learned counsel that the appellate order is not a speaking order, cannot be accepted.

11. The learned counsel for the applicant has also referred to certain authorities on the point of delegation of power of the disciplinary authority. Those authorities in the present case are totally irrelevant in view of the fact that Addl. D.C.P. is also an appointing authority as per Rule 4 of the aforesaid Rules and the notification of D.A.D. referred to in the earlier part of the judgement. Addl. D.C.P. for the purpose of supervision, may be exercising a rank not equivalent to that of D.C.P., but as regards the appointing authority of the applicant, he has been given a statutory recognition

under the Rules. Thus, the authorities relied upon by the learned counsel have no application to the present case.

12. The learned counsel for the applicant has also referred to page 6 of the findings of the Enquiry Officer regarding the serving of charge on the applicant on 14.5.87. The contention of the learned counsel is that after this charge was served on the applicant, the witnesses were not recalled again for cross-examination. In fact, under the rules, after the serving of the summary of allegations and on the basis of the reply filed by the applicant, the prosecution witnesses are examined and when the Enquiry Officer comes to a definite finding on the correctness of the summary of allegations, a formal charge is framed against the delinquent and at that stage, the defaulter is asked to produce his defence, if any. Thus, the procedure adopted by the Enquiry Officer is not illegal or irregular. The applicant at that stage, was also free to recall any of the prosecution witnesses examined against him. There is nothing on record or on the pleadings that any such request was made by the applicant after the charge was framed. It is evident that after the charge was served on the applicant, as many as 8 defence witnesses were examined. Thus, on this account also, we do not find any fault either with the conduct of the enquiry or with the findings arrived at by the Enquiry Officer. The authority relied upon by the learned counsel for the applicant of Jagdish Ram Kataria Vs. UOI & Ors. reported in 1987 A.T.C., Vol.3, 468, is not applicable at all to the present case. The matter considered in the reported case is regarding the evidence necessary to support the charge in the particular context of that case where the enquiry was conducted ex parte. In this case, the applicant has been given the fullest opportunity and there is material evidence available produced before the Enquiry Officer. The Enquiry Officer, after considering that evidence, has drawn his conclusion. The same cannot be faulted with.

13. In view of the above facts and circumstances, we find that the present application is devoid of merit and we dismiss the same, leaving the parties to bear their own costs.

Somance.

(J.P. Sharma)
Member (Judl.) 11.6.93

11/6/93
(I.K. Rasgotra)
Administrative Member