

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 409/1988

Date of decision: 28.08.1992.

Shri Sanjeev Kumar

...Applicant

Vs.

Delhi Administration & Others

...Respondents

For the Applicant

...Mrs. Avnish
Ahlawat, Counsel

For the Respondents

...Shri D.N. Goburdhan
Counsel

COFFEE:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOONIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K.
Kartha, Vice Chairman(J))

The applicant, while working as Sub Inspector in Delhi Police filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) To set aside and quash the departmental enquiry report, order dated 11.3.1987 imposing punishment and order dated 4.8.1987 rejecting the appeal; and
- (ii) to treat the suspension period as on duty and to order payment of all dues.

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2. The applicant was posted as Sub Inspector in Thana, Moti Nagar. He was placed under suspension on 5.3.1986 on the basis of certain complaints received from Rubber Factory Owners against him and the facts indicated the commission of a cognizable offence by him in his official relations with the public. The disciplinary authority also ordered a Preliminary Enquiry to be conducted into the complaint.

3. A regular departmental enquiry was initiated against him in respect of the following allegations:-

SUMMARY OF ALLEGATION

It has been alleged against S.I Sanjeev Kumar No.D-108, while posted at Police Station, Moti Nagar, and officiating as Division Officer of the area of Rama Road that:-

- (i) On 22.02.1986 in the evening he went to a factory in the name of M/s. BEST RUBBER INDUSTRIES, D-70, Najaf Garh Road in uniform alongwith a civilian. There on the pretext of checking the sulphur stock he harassed the owner and labourers and caused embarrassment to them. The S.I. also threatened ~~XXX~~ the owner Mr. Mahesh Chander and his brother who were present there to lock them up as they had stored sulphur without licence. The S.I. thereafter demanded an illegal gratification of Rs.2,000/- in case they do not want to be arrested out of which he accepted an illegal gratification of Rs.1,000/- on the spot, from the owner and ordered him to pay the rest in his room at P.S. Moti Nagar.
- (ii) On the night of 01/02-03-1986 at 0110 Hrs. the S.I. instead of patrolling the area and check the staff and maintain law and order, took the official jeep straightaway to popular Rubber Industries at 69, Najafgarh Road and started searching the factory. He also did not ask the driver to accompany as he was going to the factory in a pre-well planned manner with strong ulterior motives.
- (iii) The S.I. also harassed the workers and owner of the factory and personally started inspecting the chemical compounds kept there resulting in the mixing of chemicals thus causing financial loss

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to the owner to the tune of Rs.8,000/- approximately.

(iv) The S.I. instead of performing his duty of patrolling the area as a night checking officer on 1/2-3-1986 went to make search in the factory with ulterior motive. He intentionally avoided performing his duty which was assigned to him.

(v) The S.I. did not mention whatsoever about such search/checking in his arrival and departure report. He even did not bring the facts in the knowledge of the SHO, his immediate senior. He concealed the facts intentionally instead with an ulterior motive and personal gain.

(vi) He misused his official position and demanded and accepted an illegal gratification, on duty and in dress.

(vii) He flouted all rules and regulations about such search and kept his senior in dark.

(viii) Being a member of the disciplined force and acting so, he lowered the credibility, image and prestige of the Delhi Police".

4. Thereafter, the following charge-sheet was issued on the applicant on 27.10.1986:-

" CHARGE

I, M.L. Kararwal, Assistant Commissioner of Police, Punjabi Bagh, Delhi charge you S.I. Sanjeev Kumar No.108/D that :-

01. On the night between 1/2-3/1986 instead of performing duty of night checking officer Police Station, Moti Nagar went to make search in the premises of popular Rubber Industries 69, Najafgarh Road, in the P.S. Jeep No. DED 2539 above and did not take the driver to accompany you to the factory, but drove the vehicle yourself which is against Govt. rules.

02. You neither mention/about the checking of popular Rubber Industries, 69, Najafgarh Road in your arrival and departure report nor brought it in the knowledge of SHO and other senior officers.

03. You also flouted all rule and regulation of house search and failed to prepare search memo.

04. Being a member of the disciplined force and acting so, you lowered the credibility, image and prestige

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of the Delhi Police by searching the factory without any cogent reason at an odd hour.

The above act on your part amounts to gross negligence, misconduct, remissness, dereliction and misuse of his official duty for personal gain for which make you liable for punishment u/s 21 D.P. Act, 1978".

5. The Enquiry Officer who conducted the enquiry submitted his findings on 27.2.1987 stating that the charge has been proved against the applicant. On the basis of the same, a show cause notice was issued to him on 11.3.1987 as to why he should not be dismissed from service. The disciplinary authority passed his order dated 25.4.1987 whereby he was dismissed from service. The appellate authority by his order dated 4.8.1987 modified the punishment to forfeiture of three years approved service permanently entailing proportionate reduction in his pay from Rs.470/- to Rs.425/- p.m. The period from the date of dismissal from service to the date of resuming the duty by him was to be treated as leave of the kind due. However, the forfeiture period will be counted towards pensionary benefits etc.

6. We have gone through the records of the case carefully and have heard the learned counsel for both parties. The applicant has impugned the entire proceedings on the following grounds:-

- (i) The findings submitted by the enquiry officer are perverse and based on no evidence.
- (ii) In summary of allegation 8 allegations were served but the charge was framed only on 4 allegations,

The disciplinary authority and appellate authority, in its show cause notice as well as in appellate order, refer to all 8 allegations, and not the charge.

(iii) The non-supply of preliminary enquiry report submitted by Assistant Commissioner of Police, prejudiced the applicant as he has learnt from reliable sources that the report was in favour of the applicant and had exonerated him.

(iv) In any case, even if report is not in favour of the applicant, same being a relevant document should have been supplied to the applicant.

(v) It has not been indicated anywhere in the findings or in the impugned orders as to which rule or law has been violated by the applicant. The charge on this account is absolutely vague.

(vi) The punishment is based on conclusion drawn from preliminary enquiry and not from the departmental enquiry ~~xxxxxxxxxxxxxx~~ or the witnesses produced in departmental enquiry. This is against the statutory rules.

(vii) The Enquiry Officer has drawn the conclusion not from the evidence adduced during the enquiry but from statement recorded during preliminary enquiry.

7. The respondents have refuted the aforesaid contentions and contentions. According to them, the enquiry was conducted in accordance with the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980 and

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~~xxx~~ the charge had been proved during the enquiry.

8. It is well settled that a court or Tribunal cannot reappraise the evidence in a case of this kind. However, where the findings are perverse and are based on no there *Q* evidence or where *has* been non-compliance with the principles of natural justice, the court or Tribunal can interfere. A perusal of the summary of allegations and the charge-sheet framed thereafter indicates that in the charge-sheet four out of the eight allegations were dropped. The disciplinary authority and the appellate authority have in the orders passed by them, referred to all the eight allegations and not to the charge framed against the applicant. This discloses total non-application of mind on their part.

9. Allegation (i) of the Summary of Allegations relates to the demand of an illegal gratification of Rs.2,000/- and acceptance of illegal gratification of Rs.1,000/- by the applicant from the owner of the Factory in question. This was dropped in the charge framed against the applicant after examining the prosecution witnesses. Allegation (iii) refers to the applicant having harassed the workers and owner of the Factory and personally inspecting the chemical compounds kept there resulting in the mixing of chemicals, thus causing financial loss to the owner to the tune of *Q*

Rs.8,000/- approximately. This does not figure in the charge framed against him. Allegation (iv) states that instead of performing his duty of patrolling the area as a night checking officer on 1/2-3-1986, the applicant went to make search in the factory with ulterior motive and that he intentionally avoided performing his duty which was assigned to him. This is not included in the charge. Allegation (vi) is to the effect that the applicant misused his official position and demanded and accepted an illegal gratification, on duty and in dress. This was also dropped in the charge.

10. With regard to the remaining four allegations which have been included in the charge, there are material differences as mentioned hereinafter. Allegation (ii) is to the effect that instead of patrolling the area and ~~xx~~ check the staff and maintain law and order, the applicant took the official jeep straightforward to the Factory and started searching there. He did not ask his driver to accompany "as he was going to the factory in a pre-well planned manner with strong ulterior motives". The portion indicated within inverted commas does not figure in the charge. Allegation (v) states that the applicant did not mention about search/checking in his arrival and departure report and did not bring the facts to the knowledge of the SHO, his immediate superior.

"He concealed the facts intentionally instead with an ulterior motive and personal gain." The portion indicated within inverted commas does not figure in the charge. Allegation (vii) is to the effect that he flouted all rules and regulations about such search "and kept his seniors in dark". The portion indicated within inverted commas has been omitted in the charge.

11. There are two basic element in the charge brought against the applicant, namely, that while he was on patrolling duty, he searched a factory unauthorisedly and he did so for personal gain. There is no iota of evidence that he did so for personal gain. Out of the five PWs examined by the Enquiry Officer, none has stated that he conducted the search of the premises of the factory on the night between 1/2-3-1986 as given in the charge. PW3 who is the owner of the factory stated before him that either on the night of 24.2.1986 or 25.2.1986, on receipt of a telephone call from the factory, he went there where the applicant and another person were present. He never stated that the applicant visited the factory between 1/2-3-1986. Barring PWs 1 and 2 who are police officers and formal witnesses, no one has corroborated the prosecution story. The only material witness out of the five prosecution witnesses examined during the enquiry is Shri Sheo Deen Yadav, SHO who was the immediate superior of the applicant. During his cross/examination, he was asked as to what are duties of the applicant with regard

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to preventive action regarding crime, whether he can take preventive action regarding crime and what places can be checked by him in his division. His reply was that the applicant can visit any place where illegal and unlawful activities are going on. The Enquiry Officer has ignored this crucial evidence in his assessment. The Disciplinary Authority and the appellate authority have merely dittoed the findings of the Enquiry Officer. There is also no material to conclude that the applicant searched the factory and that too "with ulterior motive" as has been concluded by the Enquiry Officer. The finding of the Enquiry Officer, the disciplinary authority and the appellate authority is, thus, perverse.

12. There is no mention in the Summary of Allegations and the charge-sheet as to what rules/law had been violated by the applicant. The charge is thus vague.

13. The punishment imposed on the applicant is based on the conclusions drawn from the preliminary enquiry and not from the departmental enquiry. The report of the Enquiry Officer refers to the statement made by PW2 Constable Banwari Lal, Driver which was recorded behind the back of the applicant.

14. We are, therefore, of the opinion that the applicant is entitled to succeed. Accordingly, the application is

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disposed of with the following orders and directions:-

(i) We set aside and quash the impugned order dated 11.3.1987 passed by the disciplinary authority and the impugned order dated 4.8.1987 passed by the appellate authority. His suspension period shall be treated as duty. The respondents shall release his pay and allowances during his period of suspension on that basis as expeditiously as possible and preferably within a period of three months from the date of receipt of this order.

(ii) There will be no order as to costs.

B. N. BOUNDIYAL
(B. N. BOUNDIYAL) 28/8/92
MEMBER (A)
28.08.1992

P. K. KARTHA
(P. K. KARTHA) 28/8/92
VICE CHAIRMAN (J)
28.08.1992

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