

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. O.A.1337/87.

DATE OF DECISION: 11.2.1993

Kiran Singh.

... Petitioner.

Versus

Delhi Administration & Ors. ... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the Petitioner.

... Shri J.P.S. Sirahi,
Counsel.

For the Respondents.

... Shri Mukul Dhawan,
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

Shri Kiran Singh, the petitioner, in this case held the rank of Assistant Sub Inspector Police (for short. 'ASI') between 1981 and May, 1983. He was incharge of the store of the CID Special Branch, Delhi. He was by order dated 6.5.1983 transferred to the General Store of the MT Branch. In his place another ASI by the name Shri Bhanu Pratap Singh was posted. Shri Bhanu Pratap Singh entered office as Officer Incharge of Store of the CID Branch on 7.6.1983 and the petitioner was relieved of the said office.

2. A disciplinary enquiry was initiated against the petitioner by the issuance of the charge memo dated 29.9.1984 substance of which is that the petitioner failed to hand over the complete charge of the General Stores to his successor

ASI Bhanu Partap Singh despite verbal and written instructions of the senior officers. There is also an allegation that he failed to make good or to explain the shortage of the store articles mentioned in the enclosed list. There is also a further allegation that he erased some of the entries in one of the stock registers, which is contrary to the rules and standing instructions on the subject. When we asked the counsel for the petitioner as to whether the petitioner filed a reply and if so where it is, he submitted that no reply as such was furnished by the petitioner for the reason that the petitioner felt the need to be supplied with certain documents for which purpose he went on making request to the authorities. As all the documents as requested were not furnished, the counsel submitted that reply perhaps was not filed. Be that as it may, an Inquiry Officer was appointed to hold the inquiry giving opportunity to both the sides for adducing evidence in respect of both the cases and affording opportunity to the petitioner to cross-examine the witnesses produced on behalf of the department. The Inquiry Officer submitted his report holding that the petitioner is guilty of not handing over the charge of all the articles and also for shortage of several articles in the Store which he failed to account in spite of several opportunities. Accepting the report of the Inquiry Officer, the disciplinary authority issued a show cause notice to the petitioner as to why the punishment of dismissal from service should not be imposed.

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After considering the cause shown by the petitioner, the disciplinary authority made an order on 16.12.1985 imposing punishment of dismissal from service with immediate effect. The petitioner having preferred an appeal against the said order, the Addl. Commissioner of Police, CID, Delhi, the appellate authority, while agreeing with the findings on merits with the disciplinary authority came to the conclusion that the punishment of dismissal from service is excessive.

He, therefore, modified the punishment of dismissal from service to forfeiture of five years approved service permanently with a view to give one more chance to him to serve the department. It is in this background that the petitioner has approached this Tribunal for quashing the aforesaid orders.

3. The petitioner has filed a Misc. Petition bearing No. 177/93 dated 15.1.1993 seeking permission of the Tribunal to produce the four documents as additional evidence in support of the petitioner's case. Having regard to the circumstances, we thought it proper to examine that application also at the time of final hearing of the main application.

4. Shri Sirohi, learned counsel for the petitioner, contended that the petitioner has been denied reasonable opportunity of defending himself in a satisfactory manner by the Inquiry Officer by not furnishing the copies of the documents sought by the petitioner. Our attention was drawn to the request made by the application dated the 27th August, 1984 (Annexure A-5) for

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furnishing nine documents specified therein. Annexure A-6 is the reply received by the petitioner from which it is clear that the documents at Serial No. 1 to 6 were duly furnished to him at one time or the other. There is no dispute about it. So far as the documents at Serial No. 7 to 9 are concerned, the request for supply of these documents was denied on the ground that they are irrelevant. The documents at items 7 to 9 are:

- (1) Photostat copies of CCRs which were got condemned during 1983 to March, 1984 together with Road Certificate and Orders Book.
- (2) Attested copies of Inspection Reports of Gen. Store carried out by the ACsP from June, 1981 to December, 1983.
- (3) Attested copy of application of ASI Bhanu Partap Singh for Earned Leave which was forwarded by Inspector (A) and sanctioned by DCP/SB in the month of June, 1983.

5. So far as the 9th document is concerned, the petitioner has now been able to secure a copy of the same and has produced the same along with the MP No. 177/93 to which we shall advert to little later. It is necessary to bear in mind that the charge memo was issued on 29.9.1984 whereas the request for furnishing of the copies were made by application dated 27.8.1984, that is before the issuance of the charge memo. The rejection of the request in respect of items 7 to 9 was also made on

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30.8.1984 before the issuance of the charge memo. Apart from this aspect of the matter, so far as the 9th document is concerned, copies of the same having now been produced before us, we have perused the same. That is only an application for grant of leave made by Shri Bhanu Pratap Singh seeking leave for 23 days from 13th June, 1983. He has sought permission to prefix the holidays on the 11th and 12th June, 1983 as well. In other words, the leave in substance commenced from 11th of June, 1983. We are in this case essentially concerned with the failure on the part of the complete petitioner to hand over the charge on the 7th of June, 1983 on which date Shri Bhanu Pratap Singh entered office and the petitioner got himself relieved from the post of the Officer-in-Charge of the Store CID Special Branch, Delhi. The crux of the matter is as to whether the petitioner who was under an obligation to hand over the complete charge on 7.6.1983 did so or not. That Shri Bhanu Pratap Singh went on leave from 11.6.83 would not, therefore, be of any consequence in regard to what happened on 7.6.1983. We are, therefore, inclined to take the view that non furnishing of the ninth document cannot be regarded as vitiating the disciplinary inquiry. So far as item No.7 is concerned, copies sought therein are the documents in regard to the articles that were condemned during 1983 to March, 1984. So far as item No. 8 is concerned, these are the attested copies of Inspection Reports of General Store

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carried by the ACPs from June 1981 to December, 1983. These two sets of documents, in our opinion, have no relevance in handing over the complete charge by the petitioner on 7.6.1983. The petitioner would have satisfactorily proved that he had delivered complete charge to Shri Bhanu Pratap Singh had he been able to point out any record or document detailing the items of articles, charge of which was given by the petitioner to Shri Bhanu Pratap Singh. The basic issue was as to whether the petitioner handed over the complete charge on 7.6.1983 which could be established by the appropriate record or entry about the petitioner handing over charge of the specific items of articles and Shri Bhanu Pratap Singh acknowledging the receipt of the same. This is the normal practice followed in the matter of handing over the charge. The petitioner who is a responsible officer obviously knew well that there is no record to show that Bhanu Pratap Singh acknowledged. In regard to this crucial question, documents at Serial No.7 to 9 would not have any relevance. We are, therefore, satisfied that the failure to furnish the copies of these documents has not caused any prejudice to vitiate the entire disciplinary proceedings.

6. The next point urged by Shri Sirohi, learned counsel for the petitioner, is that the Inquiry Officer examined Nirmal Singh, Wadhawan and Om Prakash as court witness in violation of Rule 16(viii) of the Delhi Police (Punishment and Appeal) Rules, 1980. The said clause reads:

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"After the defence evidence has been recorded and after the accused officer has submitted his final statement the Enquiry Officer may examine any other witness to be called "court witness" whose testimony he considers, necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross examine all such witnesses and then to make supplementary final defence statement, if any, in case he so desires".

This is only an enabling provision for examining the witnesses as "court witnesses" after stage for production of evidence on both the sides is concluded. Resort can be had to this special provision only when it is necessary to clarify certain facts brought in the presence of the accused officer. In our opinion, this is not the provision which stood attracted on the facts of this case. The three witnesses were examined by the department as their own witnesses even before the defence was called upon to produce evidence in support of his case. Our attention was drawn by the counsel for the Respondents in this behalf to the application Annexure A-18 dated 26.11.1984 wherein there is no complaint about the examination of these witnesses as having made in contravention of Rule 16(viii). What the petitioner has really asked is to summon these witnesses so that he can cross examine the same. The request was considered and rejected by order Annexure A-19 dated 29.11.1984. The application has been rejected on the ground that the request made is not bonafide as it appears only to be a delaying tactics. What is more important, in our opinion, is that these witnesses were examined as PWs. It is, therefore, clear that these witnesses

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were not examined as court witnesses after conclusion of the evidence on both the sides. These witnesses were examined even before the petitioner was called upon to enter on his defence. The petitioner had duly cross-examined these witnesses. He was given ample opportunity to cross-examine the witnesses. The reasons mentioned in Annexure A-18, in our opinion, cannot be regarded as justifying recalling these witnesses giving one more opportunity to cross-examine the same. Hence, we are satisfied that the examination of these witnesses was not in contravention of Rule 16(viii).

7. It was next contended that having regard to the conduct of the Inquiry Officer in not granting permission to summon the witnesses to cross-examine, the Inquiry Officer was biased and, therefore, a request was made to change the Inquiry Officer. Every adverse order made against the delinquent is not by itself sufficient to draw an inference that the Inquiry Officer is biased. No satisfactory material was placed before us which shows that the petitioner received an unfair treatment or was denied opportunity to defend.


8. From the above discussion, it is clear that the Inquiry was satisfactorily held and there are no infirmities justifying interference with the same. In the circumstances, the request for permission to produce additional documents made in the MP 177/93 does not deserve to be granted at this stage.

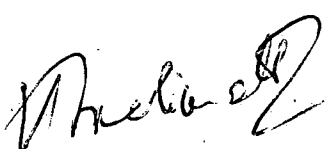
9. The learned counsel for the petitioner did make an attempt to persuade us to hold that the findings of the guilt recorded in this case are not satisfactory. He submitted that after the date for handing over charge, namely, 7.6.1983, admittedly Shri Bhanu Pratap Singh, went on leave from 11.6.1983

and someone else was holding the charge from that date onwards. There was, therefore, enough time for removal of the articles in the store. He, therefore, submitted that the possibility of subsequent loss of articles which were there when the petitioner handed over the charge on 7.6.1983 cannot be excluded all together. This contention bears on the appreciation of evidence. It is not our role to substitute our findings for those arrived at by the disciplinary authority. Hence, we would not be justified in interfering with the disciplinary proceedings in the light of the comments made by the learned counsel for the petitioner. From the above discussion, it follows that the petitioner has failed to make out a case for interference.

10. We are, however, left with the impression that in the totality of the circumstances having regard to the nature of the misconduct, the punishment as reduced by the appellate authority, appears to be excessive. While disposing of this case, we would like to say that if the petitioner files a representation within two weeks from this date to the appellate authority, he may sympathetically consider the request to reduce the penalty. We hope that if such a request is made, it would be considered in the light of the above observations with utmost expedition.

10. With these observations, this O.A. stands disposed of. No costs.


(S.R. ADIGE)
MEMBER (A)


(V.S. MALIMATH)
CHAIRMAN