CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:N.DELHI.

REGN.NO.O.A.1758/87. Date of decision: 31.3.93

Shri Arvind Kumar. ..Petitioner.

Versus

Union of India
through
The Secretary,
Ministry of Home Affairs &Ors. ..Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH,CHAIRMAN.
THE HON'BLE MR. B.N. DHOUNDIYAL,MEMBER(A).

For the Petitioner. Shri S.M. Ratanpaul, Counsel.

For the Respondents. Mrs Avnish Ahlawat, Counsel.

JUDGEMENT (ORAL)

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

This petition is by Shri Arvind Kumar, Sub-Inspector in the Delhi Police who has challenged the order passed in the disciplinary proceedings imposing the penalty of forfeiture of three years service permanently and reducing his pay to Rs.440/- as also the appellate and revisional order which have affirmed the same.

2. The petitioner was working at the relevant point of time at Kingsway Camp/Police Station. On 27.8.1984 the Station House Officer made a surprise check and in particular scrutinised the case diaries in respect of 24 cases. In the light of the information collected

against the petitioner in regard to the manner in which he was functioning, a disciplinary inquiry was initiated against him by the issuance of the memo charge / as per Annexure A-2, the preamble of which reads as follows:

> "It is charged against you SI Arvind Kumar No.D/1807 while posted at P.S. K.W. Camp, you did not take interest in your work and generally remained out of the Police Station. The following cases were pending with you, in which case diaries were not submitted in most of case".

This followed the list of 24 cases furnishing the FIR Nos, the dates of the FIRs, the offences involved, the number of case diaries and the last date of the entry in the respective case diaries. At the end of the charge, it is stated that the aforesaid act on the part of the petitioner amounts to gross negligence, carelessness and dereliction of duty justifying departmental action under Section 21 of the Delhi Police Act,1978. Shri D.L. Kashyap, Assistant Commissioner of Police, Kingsway Camp, was appointed as the Inquiry Officer. It is he who conducted the inquiry. The petitioner did not file any written statement in respect of the charge levelled against him. In the inquiry, however, he appears to have participated and cross-examined the witnesses of the department. The Inquiry Officer submitted his report dated 23.8.1985 (Annexure A-3) holding the charge levelled against

the petitioner duly proved. The disciplinary authority accepted the said findings and issued a show cause notice to the petitioner. The petitioner again failed to respond to the show cause notice in spite of several opportunities given to him for this purpose. The disciplinary authority ultimately held the charge proved and passed the impugned order dated 12.2.1985 awarding punishment, as aforesaid.

3. Shri Ratanpaul, learned counsel appearing for the petitioner firstly contended that the entire inquiry is vitiated for violation of the principles of natural justice, the Inquiry Officer Shri Kashyap being a person biased against him. It is the petitioner's case that Shri Kashyap had given evidence against him in an earlier departmental inquiry. It is, therefore, that he has taken the stand that Shri Kashyap was disqualified for functioning as the Inquiry Officer and conducting the inquiry. The respondents have, however, taken the stand that the petitioner not having raised an objection in this behalf in spite of his having several opportunities to do so, he should not be permitted to raise such a contention for the first time in these proceedings. It was submitted that if the petitioner had raised such an objection at the earliest opportunity, and the

allegations were found true, the competent authority would have set the matter right and appointed another Inquiry Officer in place of Shri Kashyap. It was submitted that no objection was raised when the inquiry was conducted. It was further submitted that no such contention was urged in the memorandum of appeal filed by the petitioner before the appellate authority. The memorandum of appeal also does not indicate that any such contention was raised. However, it was submitted by the learned counsel for the petitioner that such a contention was raised in the revision petition. The ground raised in the revision petition was that Shri Kashyap was a biased person and, therefore, he should not have been appointed as the Inquiry Officer. The petitioner has not stated even in the revision petition that he had raised objection to the participation of Shri Kashyap as the Inquiry Officer and in spite of his objection, he was allowed to participate as the Inquiry Officer. The counsel for the petitioner, however, maintained that such an objection was, in fact, raised during the course of the inquiry. He submitted that as no order sheet has been made as required by the rules, the petitioner is handicapped in the matter of establishing that such an objection

was raised. It was submitted that if such an order sheet was maintained, it would have found mention about the objection raised by him. It appears to us that the petitioner is taking advantage of the fact that no such order sheet has been maintained by the Inquiry Officer. The petitioner is a responsible officer of the rank of a Sub Inspector. He is not an illiterate novice. If he felt that the Inquiry Officer was biased and, therefore, he should not function as such, one would have expected him to raise an objection to that effect before the superior authority who appointed the Inquiry Officer. Besides, if there is truth in the version of the petitioner, one would have expected him to lodge his objection in writing. The petitioner now tries to make out a case stating that he objected orally before the Inquiry Officer. The conduct of the petitioner makes it quite clear that he did not raise any objection before the Inquiry Officer at any point of time even though he participated in the Inquiry and cross-examined the witnesses. The petitioner having not raised any objection in spite of several opportunities being available to him, an inference has to be drawn that it is an after thought. We have,

therefore, no hesitation in holding that the petitioner not having raised the objection, his complaint regarding bias of the Inquiry Officer does not merit acceptance.

4. The second contention of Shri Ratan Paul is that the Deputy Commissioner of Police who passed the impugned order is an authority lower than the appointing authority and that, therefore, the impugned order is without jurisdiction. Article 311(1) of the Constitution says that no dismissal or removal from service can be made by an authority lower than the competent authority. The punishment imposed in this case not being dismissal or removal from service but only forfeiture of three years service permanently and reducing the pay to Rs.440/-, the mandate of Article 311(1) is not attracted. Therefore, there is no substance in the second contention either.

5. The third contention of the learned counsel for the petitioner is that the copy of the report of the SHO which was the basis for initiating the disciplinary inquiry against the petitioner was not furnished to him. In the reply filed by the respondents it is stated that the report of the SHO was produced and marked as exhibit. It is also asserted that it was seen by the petitioner. It is further stated that the petitioner did not ask for a copy of the same at any point of time. There is no good reason

to disbelieve the version of the respondents in this behalf. There is nothing secret or confidential about the SHO's report, substance of which has already become a part of the charge memo itself. The charge is established not on the basis of the SHO's report but on the basis of the evidence produced during the course of the inquiry for dereliction of duties on the part of the petitioner. It is the evidence produced during the course of the inquiry in regard to the misconduct of the petitioner and not the report of the SHO, that was the basis for awarding the punishment to the petitioner. We, therefore, do not find any substance in this contention either.

6. It was next urged with considerable force by the learned counsel for the petitioner that the finding of guilt recorded against the petitioner is based on no evidence. The petitioner would be justified in challenging the finding of fact if it is based on no evidence. Certainly, the petitioner cannot call upon us to reappreciate the evidence and substitute our findings for those arrived at by the disciplinary authority. The contention requires close examination. The learned counsel for the petitioner submitted that the charge levelled against the petitioner

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is about non-maintenance of case diaries. He submitted that the evidence produced in the case shows that the petitioner had maintained the case diaries of all the 24 cases and that 11 cases were closed before the inspection by the SHO and 11 cases before the charge memo was served on him and the remaining two cases before the final decision was rendered. This takes us to a close scrutiny of the charge levelled against the petitioner. The preamble portion of the charge memo has already been extracted by us above. It is clear from a bare perusal of the same that the charge levelled against the petitioner is about his not maintaining the case diary. The charge levelled against the petitioner is that the petitioner is guilty of dereliction of duty inasmuch as he has not taken interest in the work and generally remained absent from Police Station. It is no doubt true that the information which was gathered during the course of inspection has been furnished in the charge memo. That is the information from which an inference can be drawn that the petitioner has not been taking interest in the work and has been generally remaining absent from the police station. It is, therefore, clear that the charge is not of not maintaining

the case diaries but the charge is that he has not been taking interest in the work and has been generally remaining absent from the duty. Lack of interest in the work is sought to be proved with reference to the entries in the case diary adverted to in the charge memo. The relevant information in regard to the case diaries has been furnished to show that there were no entries for a long spells of time till the date of the inspection. The inspection was made on 27.8.1984 and the last entries were made in several of the case diaries long before the date of inspection. This would suggest that for several days no entries have been made in the case diaries indicating thereby that no active work was done in those cases for investigation of the cases. The crucial question that fell for consideration having regard to the nature of the charge framed against the petitioner is as to whether the petitioner was guilty of not taking interest in his work. In regard to that aspect of the matter, the department has produced the evidence of PW-1-3. They have given evidence about the discharge of functions by the petitioner. They have also adverted to the entries made in the case diaries in support of their statement that the petitioner was not taking interest in his work. The Inquiry Officer after assessing the evidence of the three witnesses in the light of the cross-examination by

the petitioner has observed as follows:

> "After examining the above mentioned three prosecution witnesses, charge was framed against the defaulter that while he posted in P.S. Kingsway Camp he did not take interest in his work and generally remained out of Police Station 24 cases as mentioned in the statements of PW1 and PW2 were pending with him in which case diaries were not submitted in most of the cases. As such the charge under Section 21 D.P. Act, 1978 was served to the defaulter on 26.7.1985 after duly approved by the DCP/North"

The concluding portion of the Inquiry Officer's report reads as follows:

> "Having gone through the statements of P.Ws, the allegations levelled against SI Arvind Kumar, No.D-1807 as per charge have been substantiated for on 27.8.84, his C.Ds were not upto date as reported by S.H.O. Camp".

7. The counsel for the petitioner invited our attention to the evidence of PW-2 wherein he has spoken about the present position of the case diaries. The present position obviously indicated the position not on the date on which the SHO inspected the case diaries but the date on which the witness gave the evidence. It is obvious that after the SHO discovered the lapse on the part of the petitioner, the petitioner appears to have taken steps to make appropriate entries and take necessary steps for the purpose of establishing that he has tried to complete the work assigned to him as diligently as possible. The subsequent entries made after the inspection by the SHO would not be of much

relevance. What is of crucial importance is the conduct of the petitioner as disclosed in the case diaries about his not doing his duty as diligently as is expected of him. This is not a case of no evidence. At best, the petitioner may say that in regard to some of the cases delay and inaction may not be as serious as in other cases. There is enough evidence both oral and documentary about the petitioner not taking interest in his investigation work. Hence, the finding of fact recorded by the Inquiry Officer is not liable to be interfered with.

11. It was next contended that holding of ex-parte proceedings against the petitioner is in violation of Rule 18 of the Delhi Police (Punishment and Appeal) Rules, 1980. The very same Rule says that if the delinquent official is evading or avoiding to participate in the inquiry, the authority is competent to proceed with ex-parte. This is a case where indifference of the petitioner to the conduct of the case is writ large. It is surprising that the petitioner did not even choose to file a written reply to the charge memo served on him. If the petitioner was honest and his conduct was not blameworthy, one would have expected of him to deny the charges levelled against him and put forward his own version about his innocence. The Inquiry Officer is required to give reasonable

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opportunity to participate in the inquiry to the petitioner. He is not required to go on waiting indefinitely for the delinquent official to participate in the inquiry. The proceedings in this case make it clear that he has not been denied the right of participating in the inquiry. It is nobody's case that the Inquiry Officer precluded the petitioner from participating the inquiry at any stage. Before the Inquiry Officer the petitioner appeared and he was permitted to participate and cross-examine. Thereafter, the petitioner did not respond to the notice given by the disciplinary authority as is clearly adverted to in the order itself. In spite of several notices given to him, he did not respond. The disciplinary authority having waited for a reasonable time has disposed of the matter in accordance with law. Hence, we do not find it possible to accept the contention of the learned counsel for the petitioner that the inquiry is vitiated.

12. In regard to the absence of the petitioner from duty, the counsel for the petitioner stated that the evidence shows that the petitioner remained absent from police station only after his emergency duty. The counsel for the respondents submitted that the petitioner being a police officer is expected to be on duty for 24 hours. The mere fact that the petitioner was on emergency duty on some occasions does not mean

that he was not liable to perform duty after the emergency duty. The evidence of the prosecution witnesses shows that opportunity was given to the petitioner to complete his work by posting an additional officer and also by posting him in the office. These are all matters bearing on appreciation of evidence and we would not be justified in reappreciating the same and substituting our proceedings.

13. The last contention of the petitioner is that the punishment imposed is manifestly unreasonable and excessive. The Supreme Court in the case reported in **AIR 1989 SC 1185 between U.O.I. Vs. Parmananda** has held that it is for the disciplinary authority to decide about the appropriateness of the punishment to be imposed and that the Tribunal ought not to substitute its own discretion in the matter of imposing punishment. Even otherwise, we are not persuaded to take the view that punishment imposed is manifestly unreasonable and excessive so as to shock our conscience.

14. For the reasons stated above, this petition fails and is dismissed. No costs.

(B.N. Dhoundiyal)
Member(A)

(V.S. Malimath)
Chairman

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