

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

OA.NO.114 of 1990

Dated New Delhi, this the 7th day of June, 1994.

Hon'ble Shri J. P. Sharma, Member(J)
Hon'ble Shri B. K. Singh, Member(A)

Shri Ram Meher
Constable
No.1555/SD
District Lines
South District
NEW DELHI

... Applicant

By Advocate: Shri J. P. Verghese

VERSUS

1. Delhi Administration
Through its Chief Secretary
Old Secretariat
NEW DELHI

2. Commissioner of Police
Delhi Police
I.P. Estate, Police HQrs
NEW DELHI 110 002

... Respondents

By Advocate: None.
Shri Swaroop Singh,
Dept'l. representative.

ORDER(Oral)

Shri J. P. Sharma, Member(J)

The applicant was posted as Naib Court in the court of Smt. R. Kiran Nath, Metropolitan Magistrate, New Delhi. The applicant has been served with a summary of allegations that on 12.2.88 in a case FIR No.402/87 u/s 20/61/85 NDPS Act, the challan was not submitted by the applicant before the magistrate for taking cognizance in the matter before the expiry of 90 days as provided u/s 167(2)(a)(1) of the Cr.P.C. The accused was not produced in the court on 12.2.88 of that offence and an order was issued of a warrant of production of the accused on 26.2.88.

It is stated that the above act of Ct. Ram Mohar (applicant) amounts to gross misconduct and dereliction in the discharge of his official duties which render him liable for departmental action under section 21 of the Delhi Police Act, 1978. The Enquiry Officer, Shri O.P. Swamy, Inspector, SHO, Police Station, Badarpur, South Delhi, New Delhi, conducted the enquiry. He examined the witnesses produced by the administration, HC Jagmal Singh HC Ganesh Dutt, Shri Joginder Singh, Reader of the court of Shri Bharat Bhushan, ACMM, Smt R. Kiran Nath, M.M., New Delhi, HC Jainarain and S.I. Rajinder Bakshi, the PW-1 to PW-6 respectively. Another prosecution witness Shri N.N. Nagpal, the then Ahmed of the court of Smt. R. Kiran Nath, M.M., New Delhi, could not be examined as he refused to participate in the enquiry. On the basis of the evidence produced by the department, the Enquiry Officer has drawn a charge sheet against the applicant. The applicant also cited four defence witnesses, but he had examined only one witness, Ct. Chander Singh. The Enquiry Officer filed the charges against the applicant and held him guilty. The Disciplinary Authority gave a show cause notice to the applicant as to why not the applicant will be dismissed from service for the alleged misconduct. The applicant represented and was heard in orderly room whereby the Disciplinary Authority vide its order dated 20.12.88, imposed the punishment of forfeiture of his entire service permanently entailing reduction in his pay to the minimum

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of scale at the rate of Rs.950/- w.e.f. the date of issue of the order. The appeal against the aforesaid order was dismissed by the Appellate Authority vide order dated 29.7.89. Thereafter aggrieved by the same, the applicant filed this application in the Tribunal. He prays for the following reliefs:

"(i) Set Aside the impugned order dated 20.12.1988.

(ii) Direct the Respondents to revert the petitioner to his original scale to which he was entitled before the passing of impugned order and the benefit of the service put in by him as on the date of forfeiture i.e. 20.12.88.

(iii) Direct the Respondents to give all the consequential benefits, including arrears of pay, etc. forthwith.

(iv) Direct the respondents to produce the enquiry file of the petitioner in this Hon'ble Tribunal for perusal.

(v) Allow the cost of the petition to the petitioner..."

2. On notice, the respondents filed their reply and contested the application opposing the grant of reliefs prayed for by the applicant.

3. We heard the departmental representative, Shri Swaroop Singh, Pairvi Officer. He states that Shri Anup Bagai, counsel has been engaged by them, in place of Shri M. M. Sudan, counsel. However, there is no Power of Attorney on Record. The arguments have been concluded from the side of the applicant. However, we have read the reply filed by the respondents and gone through the record, assisted by the learned counsel for the applicant.

It is stated that the above act of Ct. Ram Mohar (applicant) amounts to gross misconduct and dereliction in the discharge of his official duties which render him liable for departmental action under section 21 of the Delhi Police Act, 1978. The Enquiry Officer, Shri O.P. Swamy, Inspector, SHO, Police Station, Badarpur, South Delhi, New Delhi, conducted the enquiry. He examined the witnesses produced by the administration, HC Jagmal Singh HC Ganesh Dutt, Shri Joginder Singh, Reader of the court of Shri Bharat Bhushan, ACMM, Smt R. Kiran Nath, M.M., New Delhi, HC Jainarain and S.I. Rajinder Bakshi, the PW-1 to PW-6 respectively. Another prosecution witness Shri N.N. Nagpal, the then Ahmed of the court of Smt. R. Kiran Nath, M.M., New Delhi, could not be examined as he refused to participate in the enquiry. On the basis of the evidence produced by the department, the Enquiry Officer has drawn a charge sheet against the applicant. The applicant also cited four defence witnesses, but he had examined only one witness, Ct. Chander Singh. The Enquiry Officer filed the charges against the applicant and held him guilty. The Disciplinary Authority gave a show cause notice to the applicant as to why not the applicant will be dismissed from service for the alleged misconduct. The applicant represented and was heard in orderly room whereby the Disciplinary Authority vide its order dated 20.12.88, imposed the punishment of forfeiture of his entire service permanently entailing reduction in his pay to the minimum

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4. The first point raised by the learned counsel for the applicant is that there is no specific order under Rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980. Rule 15(2) covers such cases "in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relation with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

5. However, on a careful perusal of the aforesaid provision, we are not in agreement with the learned counsel for the applicant in as much as no criminal case has been registered against the applicant. In fact, the learned counsel wants to convey that the lapse on the part of the applicant also amounts to an act which is an offence under I.P.C. The Department has not considered the misconduct as and only resorted to ~~which amounts to a criminal offence~~ a departmental misconduct. It is only in the thinking that the lapse may also amount to an offence which has not been ~~and~~ so considered as such the permission of Addl. ^{not} Commissioner of Police is not necessary. It is a far-fetched idea which cannot be accepted.

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The learned counsel for the applicant also argued that standing ^{order} No.50 places the responsibility regarding receipt of the challan registry on the Head Constable. In para 4.6 of the reply filed by the respondents, it is said that para(i) of S.O. No.50 details the duties of Naib Court and the same is stated in para 5.(viii) of the reply also. In fact, S.O.No.50 has not been produced by either of the parties. Thus, the contention of the learned counsel for the applicant, therefore, cannot find any substance. If the document is relied, it should be brought on the file and if the same is with the respondents, ^{that} prayer should be made, for the same be summoned from the respondents. In any case, the respondents have given their reply in para 4.6 and 5(viii), where it is stated that it the duty of the Naib Court for bringing the challan to the notice of the Court where he is working. ~~Naib kjkjk~~ The applicant was proceeded in departmental enquiry for certain lapses arising out of non furnishing of challan on 12.2.88 in the court where he was attached. Even if it was not his part of the duty, he is said to have been assigned with that work and there is nothing on record to show that he has not worked as Naib Court on 12.2.88.

6. The learned counsel for the applicant has emphatically and vigorously took us to the statement

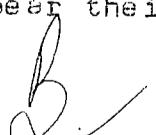
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of the witnesses examined on behalf of the administration.

The learned counsel for the applicant contended that it is a case where the findings of the enquiry Officer is based not on concrete evidence but on inference, surmises and conjectures drawn by the Enquiry Officer from unproved facts. The statement of PW-2, as well as the statement of PW-4, HC Ganesh Dutt and Smt. R. Kiran Nath, M.M., New Delhi, when read with reference to the allegations against the applicant, goes to show the involvement of the applicant in the affair of non-production of the challan of the accused of NDPS Act on 12.2.88 which was the last date i.e., 90th day for filing charge sheet provided u/s 167(2)(a)(1) of Cr.P.C. and the inference drawn by the Enquiry Officer cannot be said to be faulty on the touch-stone of reasonableness. Such a finding cannot be said to be perverse.

7. We have gone through the whole of the arguments of the learned counsel for the applicant and also regarding the fact that the Enquiry Officer has not properly appreciated the evidence of the witnesses but we find that in last para, the Enquiry Officer has given his opinion holding the applicant guilty. The Tribunal cannot assume the role of appellate authority. There is ample evidence on record to prove the charge against him. By the lapse on his part the bail was granted otherwise not. The order of the Disciplinary Authority as well as appellate authority are well speaking orders where the evidence has been fully scanned and discussed. Such an order needs no interference.

8. In view of the foregoing observations, we find that the applicant has no case and the same is dismissed as devoid of any merit and substance, leaving the parties to bear their own costs.


(B. K. Singh)
Member (A)

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(J. P. Sharma)
Member (J)