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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.1891/90

Date of Decision: 05.03.1993.

Sh. Kamal Prasad Applicant

versus

Delhi Admn.& Ors. Respondents

Coram:-

The Hon`ble Mr. B.N.Dhoundiyal, Member(A)

The Hon`ble Mr. I.K.Sinha, Member(J)

For the applicant : Sh. J.P.Verghese, counsel

For the respondents : Sh. B.R. Prashar, counsel

1. Whether reporters of local papers be allowed to see the judgement? [^]
2. To be reported to the reporters or not? [✓]

JUDGEMENT

(delivered by Hon`ble.Sh. A.K.Sinha, Member(A))

The short question which arises for consideration is whether the impugned orders dated 12.04.1990 and 07.08.1990 (Annexure 6 and Annexure 8) dismissing the applicant from service was bad in law and fit to be set aside.

2. The short facts giving rise to this application are that the applicant Sh. Kamal Prasad Sub Inspector D.1900 alongwith Constable No.1086/N SH. Zile Ram who was performing

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duty at 7 P.M. on 2.7.1988 at D.C.M. Chowk where they stopped a T.S.R. in which one Sh.Harpal Singh (since not examined) was travelling. The said Sh. Harpal Singh was alleged to be carrying a sum of Rs. 87000/- in his attachi. It was alleged that the applicant, on checking, told him that he was a terrorist and member of Gang alleged to have looted the amount from bank and threatened him to arrest and confiscate the whole amount. Due to the alleged threatening, the applicant was alleged to have extorted a sum of Rs.20,000/- from him. It was further alleged that the applicant had stopped another T.S.R. and asked the victim Sh. Harpal Singh to board on it and he sent Constable Sh.Zila Ram with him to drop him at Pahar Ganj. It was further alleged that the said Constable Sh.Zile Ram had also extorted a sum of Rs.700/- from the said Sh. Har Pal Singh on the way. It further transpires from the averments of the facts that the extorted amount was returned by Sub Inspector Sh. Kamal Prasad and Constable Sh. Zile Ram to Inspector Didar Singh S.H.O. Bara Hindu Rao who later on returned the money to the victim Sh. Harpal Singh.

3. On these allegations, a departmental proceeding was initiated against the applicant and he was chargesheeted and a formal charge was framed against him on 18.9.1986 vide Annexure-2. The applicant denied the charges and after completing the departmental enquiry, the enquiry officer recorded a finding holding that the charge against the applicant and Constable Sh.Zila Ram stands proved beyond doubt vide Annexure-3, and accordingly, a show cause notice dated

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23.02.1990 was issued to the applicant calling upon him to show cause why he should not be dismissed from service. The applicant filed his show cause and it was considered and thereafter the Dy. Commissioner of Police by his impugned order dated 12.04.1990 dismissed the applicant from service with immediate effect.

4. The applicant preferred an appeal before the Additional Commissioner of Police who on consideration dismissed the appeal concurring with the findings of Deputy Commissioner of Police.

5. The applicant has filed his application and has prayed that the impugned orders should be quashed; that it be declared that Rules 15 & 16 of the Delhi Police (Punishment and Appeal) Rules are violative of Article 311 of the Constitution of India and also against the principles of natural justice and that a direction be issued to the respondents to reinstate the applicant forthwith with all consequential benefits besides costs.

6. At the out set, it may be stated that at the time of hearing of the arguments, so far as relief No.2 was concerned, the learned counsel for the applicant did not press it and, therefore, the prayer of the applicant is now confined to his first relief as to whether the impugned orders are bad in law and fit to be set aside.

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7. On notice, the respondents appeared and filed their counter. They supported the impugned orders and contended that the inquiry was held in a proper way according to the provisions of Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter called the "Rules") and contended that the grounds taken by the applicant are not correct. It was stated inter alia that the incident of extortion of money from Sh. Harpal Singh occurred on 2.7.1988; the matter was thoroughly enquired into and the applicant allegedly returned the extorted money and had confessed his guilt before the competent authorities. A preliminary enquiry was held and thereafter a disciplinary enquiry was ordered and in that enquiry the misconduct of the applicant was proved. Therefore, on these grounds, it was sought to be urged that there was no illegality in the proceedings.

8. The learned counsel for the applicant urged before us that there has been violation of Rule 15(2) of the Rules, 1980 inasmuch as no prior approval of the Addl. Commissioner of Police concerned was obtained before initiating departmental enquiry. According to these rules, where in a preliminary enquiry from the allegations, a cognizable offence is disclosed against the police official, then the departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police.

9. In the present case, the allegations disclosed from the preliminary enquiry against the applicant were of extortion of Rs. 20,000/- from one Sh. Harpal Singh and the extortion

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has been a cognizable offence under Section 383 of the I.P.C. and thus, before initiating a departmental enquiry, prior approval of the Addl. Commissioner of Police was mandatory. But in the instant case the departmental enquiry was ordered by the Deputy Commissioner of Police without obtaining prior approval of the Addl. Commissioner of Police. Rule 15(2) of Delhi Police (Punishment and Appeal) Rules, 1900 provides that in cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of a subordinate rank, the departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether criminal case should be registered or investigated or a departmental enquiry should be held. This procedure was not followed by the disciplinary authority. The learned counsel for the applicant further submitted that the applicant during the course of enquiry had demanded the relevant documents from the enquiry officer specifically the preliminary enquiry report but the same was denied to the applicant. In this connection, on perusal of the enquiry report Annexure-3 at page 15, it will be seen that the enquiry officer had admitted that the copy of the preliminary enquiry report had not been included in the list of documents nor A.C. Sh. Shyam Dev Sharma who did the preliminary enquiry had been cited as a witness. The preliminary enquiry is only a fact finding enquiry for the satisfaction of the disciplinary authority as to the existence of a prima facie case for holding a regular departmental enquiry.

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10. Further, it is also very significant to note that the enquiry is vitiated on account of non-examination of the most relevant witnesses in the enquiry. In the present case, the victim Sh. Harpal Singh who was the complainant against whom the applicant was alleged to have extorted some amount and further to whom the Inspector Sh. Didar Singh, returned the extorted amount, in the record of the disciplinary enquiry as well as preliminary enquiry. There is no written complaint of Sh. Harpal Singh. The said Sh. Harpal Singh had not been examined as a witness in the preliminary enquiry. His name did not figure in the list of witnesses of the disciplinary enquiry nor he was examined during the course of disciplinary enquiry. The said witness Sh. Harpal Singh was the most relevant witness as from whom allegedly the applicant had extorted Rs.20,000/-. Had this witness been examined and if he had proved the incident, the applicant would have been guilty of the charge of extortion but in the absence of the evidence/statement of Sh. Harpal Singh, either written or oral and in the absence of any seizure documents relating to the money recovered it cannot be said by any stretch on imagination that the alleged charge against the applicant had been proved.

11. The learned counsel for the applicant further drew our attention towards Annexure 8 which is the order of the Addl. Commissioner of Police in appeal dated 7.8.1990 and submitted that on perusal of this order it will be transpired that in paragraph 2 & 3 there has been narration of facts and

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in paragraph 4 the Addl. Commissioner of Police have stated as follows:-

" I have gone through the relevant D.E. papers and Appeal of the Appellant. On perusal I find that the charge of extortion of Rs.20,000/- by the Appellant from one Sh. Harpal Singh was conclusively established during the course of D.E. The pleas raised in the Appeal are erroneous and untenable. There is overwhelming evidence on record to prove the charge. For such a grave misconduct, a deterrent punishment is called for. The Appeal is, therefore, rejected."

12. We are sorry to mention, on perusal of the impugned order Annexure-3, that the authority had passed cryptic order which is against the principle of natural justice and is also against the judgement laid down by the Highest Court. The Disciplinary Authority had disposed of the matter in a very casual manner without assigning any reason for arriving at the conclusion. The Appellate Authority disposed of the appeal by stating that 'I have gone through the relevant D.E. papers of the Appellant. On perusal I find that the charges of extortion of Rs:20,000/- by the Appellant from one Sh. Harpal Singh was conclusively established during the course of disciplinary enquiry.' As stated above, the said Sh. Harpal Singh the victim had neither been examined in the preliminary enquiry stage nor during the disciplinary enquiry stage nor he had put in any written complaint before any police authorities on the

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basis of which any station diary regarding the incident was ever recorded. Therefore, in the absence of those material evidence on record, the conclusion arrived at by the Disciplinary Authority and the Appellate Authority regarding the guilt of the applicant is without any foundation. From the impugned order Annexure-3 it is obviously clear the Appellate Authority did not apply his mind as to whether the act of alleged misconduct with which the applicant was charged was proved by any cogent and reliable evidence on record are not.

13. The learned counsel for the applicant drew our attention towards the impugned order dated 12.4.1990 Annexure 6 and further drew our attention towards Annexure-9 dated 9.8.1989 and submitted that 8 months prior to the impugned order, the Deputy Commissioner of Police had already prejudged the applicant without any basis as the most corrupt police officer without giving any opportunity to the applicant or audience in this regard. Annexure-9 dated 9.8.1989 is the Annual Confidential Report and in that confidential report the Deputy Commissioner of Police had stated that the applicant was the most corrupt police officer while he was incharge of checking party at the seiling point D.C.M. chowk. He extorted a sum of Rs.200000/-from a passenger. The learned counsel for the applicant contended that in arriving at this finding there was no cogent evidence to support the finding of the Deputy Commissioner of Police inasmuch as the victim Sh. Harpal Singh had neither filed any complaint nor his statement was ever recorded at the police station concerned besides no recovery memo was ever prepared regarding the alleged extortion of money from the applicant.

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15. In view of the above mentioned legal infirmities appearing in the present case, we hold that the impugned orders dated 12.04.1990 and 7.8.1990 Annexure 6 and Annexure-8 dismissing the applicant from service and his appeal were bad in law and fit to be set aside. We further direct that the disciplinary Authority to act according to law as indicated above and dispose of the proceedings according to law. The case is sent back on remand to the Disciplinary Authority with the above direction. We further direct that the matter should be finalised within two months from the date of receipt of a copy of this judgement. We further direct that the applicant be reinstated into service and while in service the disciplinary proceedings be disposed of according to law. The applicant will not, however, be entitled to any back wages.

No costs.

Ashok Kumar Sinha
(A.K. Sinha) 5/3/93

Member (J)

B.N. Dhoundiyal
(B.N. Dhoundiyal) 22/3/93

Member (A)