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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1988/90.

Date of decision: 8-3-1995

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

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Bhagat Singh,
S/o Shri Ranpat,
resident of Village Dindarpur,
P.O. Najafgarh,
New Delhi. .. Applicant

(By Advocate Shri D.N. Vohra)

versus:

1. The Commissioner of Police,
M.S.O. Building,
Delhi Police,
I.P. Estate,
New Delhi.

2. Union of India,
Ministry of Home Affairs,
Government of India,
New Delhi through its Secretary.

3. The Deputy Commissioner of Police,
Delhi Police,
IIInd Bn, DAP,
Delhi. .. Respondents

(By Advocate Shri Amrit Mathur)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant, who was employed with the Delhi Police, is aggrieved by the removal order dated 10.12.1987 (Annexure P-1) (mentioned in the O.A. as order dated 30.12.1987) and the revision order dated 15.12.1987 passed by the Commissioner of Police dismissing his appeal (Annexure P-2). The impugned orders have been passed the after holding the departmental enquiry under Section 21 of

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of the Delhi Police Act, 1978.

2. The brief facts leading to the enquiry are that while the applicant was working as constable in the Delhi Police, he was issued a summary of allegations which is as follows :-

" It is alleged that you Const. Bhagat Singh No. 1284/DAP II Bn. N.P.L. while posted in 2nd Bn. DAP, Delhi and attached with striking force, deployed at PS Haus Khas in South Distt. New Delhi misbehaved with ASI Naval Kishore No. 1151/DAP Incharge of Striking Force guard and also abused him in the presence of Consts. Ranbir Singh No. 143/DAP, Hari Kishan, 1316/DAP, Ram Kumar 9757/DAP 8th Bn. Ashok Kumar 9347/DAP, 8th Bn. of striking force guard on 28.7.1987, while on duty for not allowing you continuous rest for 2/3 days in a week.

The above act on your part amounts to grave misconduct, dereliction of duty, gross indiscipline and insubordination which is unbecoming of a police officer and renders you liable for departmental action u/s 21 of Delhi Police Act 1978".

Along with the summary of allegations, a list of witnesses and the brief nature of evidence they were to depose, and the list of documents were given to the applicant. However, the applicant states that the complaint of Shri Naval Kishore, ASI was not given to him.

3. We have heard both the learned counsel, Shri D.N. Vohra for the applicant, and Shri Amritsh Mathur, for the respondents, and also perused the records.

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4. Shri D.N. Vohra, learned counsel for the applicant, submits that the impugned orders of removal and the appellate order are illegal, arbitrary and violative of Articles 14 and 16 of the Constitution and hence, should be set aside. His main grounds against the penalty order are -

(i) That the allegations and charges are extremely vague and ambiguous and do not give the particulars with regard to the date and time of the alleged mis-conduct and sufficient particulars of the incident including the abuses ^{was} which he alleged to have uttered in the presence of other constables against ASI Naval Kishore. He relies on the judgments of the Supreme Court, namely, Sawai Singh v. State of Rajasthan (SLJ 1986 (2) 265), Surath Chandra Chakravarty v. State of West Bengal (1971 SLR 103) and State of Uttar Pradesh v. Mohd. Shrief (1982 (2) SLR (Vol.30) 265), K.N. Prakasan v. UOI & Others (1992(20)ATC 676 (Bombay)).

(ii) The provisions of Rule 14(3) and Rule 19 of the CCS (CCA) Rules have not been complied with, as the statement of imputation and mis-conduct in support of each article of charge has not been given and secondly the charged official has not been questioned about what he has to say regarding evidence against him.

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(iii) The applicant has been victimised since all the witnesses have deposed that the ASI Naval Kishore was in inimical terms with him and the findings are, therefore, arbitrary and perverse which cannot stand the test of a reasonable man. He has relied upon a judgment in Bengal Bhat dee Coll Company v. Ram Parkash Singh & Others (1963(1) LLJ 291) and D.C.M. v. Loh Budh Singh (1972(25)FLR (SC) Page 1 at p. 8 and 12.

(iv) The punishment awarded to the applicant is unwarranted, grave and shockingly disproportionate to the offence charged with and is violative to the Articles 14 and 16 of the Constitution because he has been awarded the punishment of removal from service and other similarly situated constables have only been transferred.

(v) The learned counsel for the applicant also invited our attention to the findings of the Enquiry Officer dated 22.12.1987 (Annexure P-4) and the evidence of Head Constable Dahi Ram recorded therein in which he has stated as follows :-

" Constable Ranbir Singh told the ASI that Constable Raghunath was abusing him".

According to the applicant's counsel, the evidence of prosecution witness itself shows that it was not the applicant who was abusing the ASI. He also relies on the evidence of the DWs and submits that none of them have stated that the applicant was abusing the ASI. He has also drawn attention to the findings of the Enquiry Officer which reads as

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follows :-

Though the other constables were also against the ASI for not allowing them to take meal at a Dhaba but the defaulter took a leading role which shows that he already bears some enmity against the ASI which may be due to for not advancing him demanded rest for 2/3 days in a week. HC thus got it a good opportunity to give outlet to his malicious inner feeling against the ASI. The other guilty consts. of South Distt. were changed by the DCP/S from the guard.

It has been proved that the vehicle was taken from Lajpat Nagar and was got stopped at a Dhaba against the consent of the ASI and in this indiscipline the defaulter played a minor role. The charge against the defaulter of misconduct, gross indiscipline and in-subordination which is unbecoming of a Police Officer and renders him liable for action u/s 21 of Delhi Police Act, 1978 has proved beyond any doubt." (emphasis added).

This conclusion of the Enquiry Officer is perverse because there was no charge or evidence that the defaulter had taken a leading role.

(vi) Based on the findings of the Enquiry Officer, the Disciplinary Authority has passed the severe punishment of removal of service of the applicant whereas the other constables have only merely been transferred. Shri D.N. Vohra, learned counsel for the applicant points out that the above findings and punishment order are arbitrary and violative of Articles 14 and 16 of the Constitution. He has also referred to the additional charge of mis-behaviour with S.F. Kanwar Singh of 6th Bn. DAP when detailed for VIP route duty on 26.10.1987 referred to in the revision petition, on which he was neither charge sheeted nor any evidence was led during the enquiry.

5. Shri Amrish Mathur, learned counsel for the respondents

has denied the above averments. He states that the charge was not vague and the exact word of abuse was not necessary to be given. He states that since no preliminary enquiry was held, the objection raised by the applicant that he was not given a copy of the preliminary enquiry report is without basis. He states that the punishment order had been passed by the competent authority based on the evidence adduced before it during disciplinary enquiry proceedings and the Tribunal should not re-appraise the evidence. He states that the applicant is with DAP of which the ASI Naval Kishore was incharge of the Strike Force whereas the other constables who are involved in the incident enquired into, were under the control of DCP (South) who thought it fit to transfer them. Therefore, he submits that there is no violation of the rules or denial of the principles of natural justice to the applicant.

6. We have carefully considered the arguments of both the learned counsel, the records in the case and the various judgments relied upon by the applicant.

7. The Supreme Court has held in Sawai Singh v. State of Rajasthan (Supra) that where the charges are vague, it was difficult for the accused to meet the charges fairly. In this case, it was held as follows :-

" a departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be fair play in action, respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation."

In an earlier judgment of the court in Surath Chandra Chakravarty v. State of West Bengal (Supra), the Supreme Court

has held that* the whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the recruitment of giving a reasonable opportunity to put up defence.* In Dina Nath

Pande v. State of Uttar Pradesh & Others (1990(2)

SLJ 20), the Allahabad High Court has also held that in the charge for using improper words to the Kanonga, since neither the words were indicated nor how the incident took place it

was a vague charge.

8. Having regard to the observations of the Supreme Court and High Court in the aforesaid cases and the allegations and charge levelled against the applicant in this case, we agree with the contentions of the learned counsel for the applicant that the charge is vague.

9. Next, referring to the enquiry proceeding and the evidence recorded by the Enquiry Officer, the Enquiry Officer himself has come to the following findings :-

* All the DW's , who were present throughout the incident like the PWs have tried to prove that in the vehicle quarrel started when constable Ranbir Singh objected over the filthy remarks of Consts. Raghu Nath and Vinod Kumar against the ASI and an enquiry by the ASI for knowing the cause of their quarrel Ranbir Singh told him that Raghu Nath and Vinod Kumar were abusing him whereas PWs and Ranbir Singh in their statements have said that const. Bhagat Singh defaulter was abusing the ASI. Const. Vinod Kumar was also not admitted that he participated in the quarrel/abusing of the ASI.

Raghunath has already been dismissed from the force for some other allegations by the DCP(S). Thus the statements of the DWs are not tenable.*

10. It is clear from the above findings of the Enquiry Officer that besides the applicant, some other constables, namely, Raghunath and Vinod Kumar were also stated to have abused the ASI. While Raghunath has been dismissed from the force for some other allegation by DCP(S), the other guilty constables of South District, according to the report of the Enquiry Officer himself, were charged by the DCP(S) from the guard. These findings, therefore, show that while for the same offence of abusing the ASI some of the other constables were merely transferred by the DCP(S), the severe punishment of removal from service has been given to the applicant. This itself shows that the impugned punishment order given to the applicant is unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution.

11. The learned counsel for the applicant also relied on the judgment of the Gujarat High Court in E.V. Kotecha v. Halar Salt & Chemical Works (1986 Lab.I.C. 938-Gujarat). In this case the High Court has held-

* No responsible employer acting reasonably can say that for a misconduct of uttering abuses to the Manager, should result into extreme penalty of dismissal as if such misconduct is the highest form of severe misconduct. Persons belonging to comparatively poorer



and backward strata of society may not have the same sense of sophistication in expressing their outburst but that does not deserve the punishment of losing the service."

These observations of the High Court are applicable to the case before us, more so when it is considered that, the applicant seems to have been singled out for removal from service, whereas some others were merely transferred.

12. It is well settled law that the Tribunal cannot re-appraise the evidence or interfere with the findings of the Enquiry Officer or competent authority except when they are arbitrary or utterly perverse UOI v. Parma Nanda (AIR 1989 SC 1185), Hind Construction Engineering Company v. Their Workmen (1965(1) LLJ 462 (SC)), and Delhi Cloth & Gen. Mills Co. v. Ludh Budh Singh (Supra). In Delhi Cloth & Gen. Mills Co. v. Ludh Budh Singh, the Supreme Court summed up the position as follows :-

" Thus, there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and those two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal in each of these cases are findings are treated as perverse".

13. The findings of the Enquiry Officer referred to above to treat the statement of the DWs as untenable cannot be held to be reasonable. Further, his conclusion that the defaulter took a "leading role" along with the other constables against the ASI for which he was charge-sheeted is also baseless, because no where in the charges it was alleged that he had taken a leading role. Hence he had not been given a reasonable opportunity to defend. Therefore, the conclusion of the Enquiry Officer, on the

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basis of which the disciplinary authority had passed the order of removal from service is bad, not only on the ground that the charge was vague but it was no where alleged that the defaulter had taken a leading role in the alleged misconduct. The order of the disciplinary authority dated 10.12.1987 is cryptic and merely agrees with the findings of the Enquiry Officer. Having regard to the consequences of the offence with which the defaulter had been charged, the nature of the charge and the evidence adduced before the Enquiry Officer, we are of the opinion that the findings of the Enquiry Officer and punishment order based on it are perverse and not sustainable. The punishment order is arbitrary and violates Articles 14 and 16 of the Constitution, as other persons involved in the incident with the applicant have merely been transferred. In the circumstances, the punishment of removal from service is also grossly disproportionate to the offence charged.

14. In the result, the application is allowed and the penalty orders are quashed and set-aside. The respondents are directed to reinstate the applicant in service. This, however, will not preclude the respondents, from proceeding against the applicant for the alleged mis-conduct, and the intervening period from the date of removal till the date of

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reinstatement, whether to be treated as spent on duty or not will be decided by the Disciplinary Authority on the conclusion of the proceedings, if they decide to institute the same, in accordance with law. The applicant shall not be entitled to be paid back wages in the meantime. The Departmental Enquiry, if initiated may be completed within a period of six months. The respondents are granted three months time to implement these orders, from the date of receipt of a certified copy of this order.

15. There will be no order as to costs.


(Lakshmi Swaminathan)
Member (J)


(B.K.Singh)
Member (A)