

Central Administrative Tribunal
Principal Bench
New Delhi

DA No. 2465/90

New Delhi, this the 7th December, 1994.

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI S.R.ADIGE, MEMBER(A)

Jagdish Singh (2040/SW)
son of Shri Ram Karan,
R/o village Jaffarpur Kalan,
Delhi- 110 073

working as Assistant Sub Inspector,
in Delhi Police at Palam Airport,
New Delhi.

Applicant

(By advocate Shri Shyam Babu)

Versus

1. Delhi Administrator Delhi
through its Chief Secretary,
5, Shyam Nath Marg, Delhi.
 2. Dy. Commissioner of Police,
South West District,
New Delhi.
 3. Addl. Commissioner of Police
(Southern Range), Police Headquarters,
I.P.Estate, New Delhi.
- (By Shri B.S.Oberoi proxy for Sh. Anoop Bagai)

...Respondents

JUDGEMENT (ORAL)

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

The applicant has been proceeded in a departmental disciplinary enquiry while posted as Assistant Sub-Inspector in Police Station, Dabri. The summary of allegations against the applicant is that he failed to register FIR on the basis of DD Entry No. 10 dated 5.11.1988 lodged at the

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Police Station Dabri on the information of a report received from All India Institute of Medical Sciences regarding the injury caused to one minor girl Kum. Savita by stone on one of her eyes. The FIR in this case was lodged after the complainant have approached the highest authorities and on their intervention the Dy. Commissioner of Police, South-West District of Delhi Police directed the Asstt. Commissioner of Police concerned that a report be written and action be taken. The Assistant Commissioner of Police, therefore, directed to lodge a report on 29th December, 1988 and that too ^{was registered} under section 337 of IPC.

2. The applicant in that departmental disciplinary proceedings was served with a summary of allegations alongwith list of witnesses to be examined against him. Shri Tek Chand, Inspector, Department Enquiry Cell of Vigilance, conducted the enquiry and after examination of the witnesses examined by the department framed a charge against the applicant on two accounts. Firstly that the applicant has registered the case when an enquiry was ordered to be conducted and secondly he failed to register the case under the appropriate section of law i.e. 324 IPC although the MLC was received on 5.11.1988 and that should have been done on the same day.

3. The Enquiry Officer gave his report on 20th November, 1989 holding that the charge against the applicant is proved on which, after show cause notice, the applicant was imposed

a penalty by the disciplinary authority by the order dated 15.3.1990 for-feeiting the applicant's two years service entailing reduction in his pay with permanent effect. The applicant has appealed against that order and the same was dismissed by the order dated 13th August, 1990, by the Additional Deputy Commissioner of Police.

4. Aggrieved by the aforesaid order of punishment the applicant filed this Application on 22nd November, 1990 praying for the grant of the reliefs that the order of punishment as well as the findings of the Enquiry Officer referred to above be quashed and the applicant be granted all consequential benefits.

5. On notice the respondents contested this Application and opposed the grant of the reliefs on the ground that the applicant has misconducted himself as much as a call was received at about 10.15 A.M. On 5th November, 1988 from All India Institute of Medical Sciences at Police Station, Dabri that one girl Kum. Savita d/o Shri Surat Singh has been admitted to Rajindera Prashad Centre by her father with the stone injury on her right eye caused by her neighbour. The D.D. Entry was marked to the applicant for enquiry and legal action. The applicant went to the All India Institute of Medical Sciences and found that Savita was already discharged from the Hospital and then he went to the house of Savite

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at Sagarpur but did not record her statement and failed to take proper action on the report. The applicant kept the report pending for 53 days inspite of registering the case under Section 324 of IPC on the date of reporting of occurrence of incident. He, however, registered the case under section 337 IPC only by the order of the Senior Officers. This act on the part of the applicant constitutes negligence in the discharge of official duties. In view of this, the order of punishment was passed after holding a regular departmental disciplinary enquiry, according to the statutory rules, where adequate opportunities were given to the applicant. The punishment imposed by the disciplinary authority cannot be set aside.

6. The applicant has not filed any rejoinder as revealed from the order dated 10th July, 1991.

7. We heard Shri Shyam Babu counsel for the applicant and Shri B.S.Oberoi proxy counsel for Shri Anoop Bagai counsel for the respondents. The first contention of the learned counsel for the applicant is that the Enquiry Officer has not dealt with elaborately with the defence witnesses examined by the applicant nor referred to them in the findings arrived at against the applicant. We have gone through the findings of Enquiry Officer and we do find that Enquiry Officer has not touched this aspect of the defence but looking to the defence witnesses examined by the applicant they do not throw any

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light on the alleged misconduct against the applicant of delay in lodging the report and of registering the case under Section 337 instead of under Section 324 IPC.

Basically in an enquiry as well as in a trial, the evidence of the witnesses deposing against the delinquent or accused have to be ^{shattered} by putting such questions in the cross examination or in such a manner that reliance cannot be placed on the witness so examined. In the present case witnesses who have been examined by the prosecution are the relatives of the injured ^{also} and the officials posted at Police Station. The constable who handed over the DD Entry to the applicant on 5.11.1988 has approved that fact. In view of this, the report of Enquiry Officer which has been considered by the higher authorities cannot be said in any way, infirm for not mentioning the deposition of the defence witnesses.

8. The second contention of the learned counsel for the applicant is that the applicant had been charged that he has registered the case after the enquiry has been ordered. His contention is that there is no evidence what-so-ever before the Enquiry Officer at this specified charge against him. A fact is proved by evidence adduced or the natural sequences of events and therefore no other proof is required. In this case it is admitted to the applicant that

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he registered the report on 29th December, 1988. It is also admitted to the applicant that he received the DD Entry No. 10-A of Police Station, Dabri on 5.11.1988. As an Assistant Sub Inspector who must have got some training in the lower school course must know the provisions of criminal procedure code. When the DD Entry was handed over to him and he left for the spot i.e. the All India Institute of Medical Science from where a telephone call was received on the same day at 10.15 a.m., on return from there he should have registered the F.I.R. which he did not do. This by itself is a dereliction of duty committed by the applicant by virtue of his office, may be by inadvertence, ignorance, or with ulterior motive, but it is not relevant. In view of this, examination of any witness on that account and in the circumstances of the case, no evidence to that effect could be brought before the Enquiry Officer. It was a personal conduct of the delinquent which delayed in registering the F.I.R. Against the culprit who had thrown the stone injuring the eye of a minor girl.

9. The contention of the learned counsel for the applicant regarding the registration of the report under Section 337IPC, it is fervently argued with emphasis that without opinion of Medical Officer the nature of injury could not have been judged. The medical opinion of the public prosecution branch was received much after registering the case.

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10. The learned counsel has also referred to the fact that he was directed to register the report by the Assistant Commissioner of Police under Section 337 IPC. Basically an injury caused by a sharp weapon or an article of the nature of sharp weapon which results in harm on the person the case made out is under Section 324 IPC. The case under Section 337 IPC is only where there is some rash act by a person which results in causing harm to another and an offence is thereby committed. The victim was inside where a stone was thrown on her which subsequently was found to be thrown by one Birmati, a neighbour from the roof of the house which caused injury to the minor girl namely Kumari Savita. Thus a bare knowledge of the relevant provisions under which the offence falls was required from the applicant and in that event too either he did not act carefully or mitigated the offence giving the benefit to accused by registering the report under Section 337 IPC.

11. The contention of the applicant is also that victim was not in the state of giving statement and there is a proof thereof. The learned counsel also referred to the statement of the father of the injured that the victim at that time on 5.11.1988 was not in a position to give the statement. This is a fact.

However, the lodging of the report cannot be procrastinated till the medical opinion is received. It may be that subsequently the gravity ^{of the offence} may be enhanced with a grievous nature of injury as per medical opinion by writing supplementary DD entry with reference to the FIR already registered earlier at the Police Station, Dabri. This defence taken by the applicant placing the blame on the prosecution branch of the police force cannot be accepted.

12. We have gone through the findings of the Enquiry Officer and the statement he has recorded and the conclusion drawn by him, cannot be said to be perverse or without any evidence or that another conclusion in the circumstances of the case, could be arrived at on the reasoning of a reasonable man. In such cases the interference of the Tribunal is not justified in view of the latest authority of the Hon'ble Supreme Court of India reported in State of Tamil Nadu vs. Raja Pandey reported in 1994 Volume-7 Judgement Today page 492.

13. The learned counsel for the applicant when the judgement was to close, pointed out that one of his arguments that nobody pointed out that the FIR should have been registered in a particular section, which has not been dealt with. We have considered this aspect

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while discussing the second charge. However, the fact remains that when law ordains a person to do a thing in a particular manner he should do in a same manner and not otherwise. Ignorance of law cannot be pleaded as a justification in an act which amounts to misconduct or an offence. Contention of the learned counsel that there is no evidence to this effect also cannot be accepted.

We, in the above circumstances and facts, dismiss the case as devoid of merits. No costs.

S. R. Adige
(S. R. ADIGE)
MEMBER (A)

J. P. Sharma
(J. P. SHARMA)
MEMBER (J)

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