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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI.

OA.No.2568/90

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Dated this the 30th Day of January, 1996.

Hon'ble Shri N.V. Krishnan, Acting Chairman.
Hon'ble Dr. A. Vedavalli, Member(J).

Yashbir Singh
S/o Dharambir Singh
R/o O-65, Indra Enclave,
Loni, U.P.Applicant

By Advocate: Shri A.S. Grewal.

versus

1. Commissioner of Police Delhi,
Delhi Police Headquarters.
M.S.O. Building, I.P.Estate, New Delhi.
2. Additional Commissioner of Police,
New Delhi Range, Delhi Police Headquarters,
M.S.O. Building, I.P.Estate, New Delhi.
3. Deputy Commissioner of Police, North-East
District, Vishwas Nagar, Shahdra, Delhi
(Shalimar Park).Respondents

By Advocate: Shri B.S. Gupta.

O R D E R
(By Hon'ble Dr. A. Vedavalli, Member(J))

Yashbir Singh, a Police Constable in the Delhi Police is the applicant in the present O.A. He is aggrieved by the forfeiture of 5 years of approved service permanently entailing reduction in pay from Rs.1050/- p.m. to Rs.950/- p.m.

2. Facts of the case briefly stated are as under:-

The applicant was appointed in the Delhi Police as Constable on 3.10.80. While serving thus, a departmental enquiry was initiated against him and he was served with a summary of allegations (vide Annexure-A). After departmental enquiry was conducted, the penalty was imposed by respondents No.3 (Annexure-C). The applicant preferred an appeal to



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the appellate authority (respondent No.2) which was later on rejected (Annexure-D). Thereafter the applicant has filed the present OA before this Tribunal.

3. The applicant has challenged the aforesaid impugned orders on several grounds and has sought the following reliefs:-

(i) Summary of allegations and charge be set aside.

(ii) Order No.627-62/HAP/NE dated 28.2.1990 passed by the Deputy Commissioner of Police, North East District, Delhi, whereby the punishment of forfeiture of five years approved service permanently entailing reduction in pay from Rs.1050/- per month to Rs.950/- per month was illegally awarded, be set aside.

(iii) Order No.2617-18/SD-NDR dated 20.7.90 whereby an appeal preferred by the applicant was rejected by the respondent No.2, be set aside.

(iv) Costs of the application be allowed.

(v) Any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case be also awarded to the applicant.

4. The respondents have resisted the OA and have filed their counter statement. The applicant has filed a rejoinder broadly denying the contents thereon and reiterating the various averments in the OA.

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5. We have heard the learned counsel for the parties and have perused the relevant papers and documents placed on record. We have also gone through the departmental files made available for perusal by the respondents.

6. The summary of allegations against the applicant (Annexure-A) is as follows:-

"On 26.10.1988 Constable Yash Bir Singh No.393/NE who was posted at P.P. Khajuri as a beat constable went to Khajuri colony and unauthorisedly took away the V.C.R. and T.V. of Shri Subhash Chand Tomar from the house of one Sultan Singh, where a picture was being displayed. The spectators were either the neighbours of some villages who have come on that day to participate in the Kisan Rally at boat club. The constable deposited the said V.C.R and T.V. in the police post vide DD.No.25 dated 26/27.10.88 u/s 66 D.P.Act. He not only took the V.C.R. & T.V. from inside the house but also misbehaved and abused the persons/viewers and took the persons including ladies to the police post. He also threatened to put them behind the bars. These persons were detained in the police post till morning 5 A.M.

ASI Ram Avtar while posted at P.P.Khajoori on 26.10.88 supported constable Yashbir Singh No.393/NE by depositing the TV & VCR of Sh. Subash Chand Tomar from the house of Sh.Sultan singh vide DD.No.25 dt.26/27.10.88. He is guilty of not acting judiciously while depositing the T.V. & V.C.R. by constable Yashbir Singh. The ASI supported the act of the constable and also abused and misbehaved with the persons who came to the PP with the said constable.

The above acts on the part of ASI Ram Avtar No.223/E and constable Yashbir Singh No.393/NE amount to gross misconduct, remissness and indiscipline on the discharge of their duties which renders them liable for action u/s 21 of Delhi Police Act,1978."

7. The charge against the applicant (Annexure-B) is as under:-

"I, Inspector Shakti Singh, DE Cell, Vigilance Delhi, charge you, Constable Yashbir Singh No.393/NE that while posted as a beat constable at P.P.Khajoori Khas, you took away the VCR and TV of Sh.Subhash Tomar to the police post in the night between 26/27.10.88 and unauthorisedly deposited it u/s 66 D.P.Act. You misbehaved and abused the persons / viewers and took the viewers including ladies to the police post and detained them illegally upto 5 AM and threatened them to put them behind the bars with ulterior motive."

8. The first main ground on which the impugned orders are challenged by the applicant briefly, is that the enquiry was not conducted fairly because the enquiry officer did not supply copies of relevant documents to the applicant to enable him to cross examine the PWs effectively, complaint was false as there was a delay of five days on the part of the complainant Subash Chander Tomar and that the witnesses who have signed the complaint were not examined. Hence the punishment given to the applicant is a false complaint and is bad in the eye of law and is liable to be quashed.

9. The respondents in reply have submitted that the aforesaid ground is wrong, false and misconceived. They have stated that the relevant documents had already been supplied to the applicant by the enquiry officer on 25.4.89 and his signature in token of receipt is on the DE file. However, copies of statement of PWs were not supplied as per the provisions of rules 16(vi) of the Delhi Police (Punishment and Appeal) Rules, 1980. Default can inspect and take extract from such official documents for preparation of his defence. But he never applied for the same. They have also contended that the delay

in filing of complaint is not relevant as the complaint had been substantiated and the applicant was awarded punishment.

10. The applicant has denied the contents of the aforesaid reply of the respondents.

11. We have perused the original records made available by the respondents.

12. It is seen from the DE file that the applicant had in fact received copies of the summary of allegations, list of documents by which and the list of witnesses by whom the allegations framed against him are proposed to be sustained on 25.4.89. This is the only requirement of the Rule. Hence we find that the allegations about the non-receipt of the aforesaid documents is not correct.

13. Re. copies of statements of witnesses, there is no provision for their supply unless asked for. The applicant has not filed a copy, if any, together with proof of receipt by the respondents of the request for inspection of the said statements under the relevant provisions of Rule-16(vi) of the aforesaid rules. We, therefore, find that the above plea has not been proved by the applicant and hence is unsustainable.

14. The second ground pressed by the applicant is that this is a case of no evidence as none of the witnesses stated anything against him.

His contention is that all the PWs escaped when they saw him coming in uniform and that they were persuaded by someone to lodge a false complaint against him to get the T.V & V.C.R back and hence, the framing of charges against him by the enquiry officer is erroneous.

15. Moreover, the enquiry officer relied upon the statement recorded during the preliminary enquiry behind the applicant's back which he is not competent to do.

16. The respondents have denied the above ground as being misconceived. They have stated that the T.V. & V.C.R. were found in the house of Shri Sultan Singh and the applicant misbehaved and abused the viewers there and brought them to the police station/post and thereafter also behaved in an inhuman way. They have also submitted that the PWs appeared to have been threatened/won over and hence their statements were not relied upon in the DE. PWs 1,2 and 3 admitted their statements in the DE while the PWs 5,6 and 7 have disowned their statements therein but admitted their signatures thereupon. All the above PWs have altered the contents of their statements in the DE to favour the applicant. Since their statements could not be relied upon in the DE, their PE statements were brought on record and hence, the applicant's contention is not tenable.

17. In order to consider the legal tenability of the aforesaid ground, it would be necessary to examine the same in the light of the relevant provisions of the Delhi Police (Punishment and Appeal) Rules, 1980.

18. Rule 15(3) of the aforesaid rules runs thus:-

"(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer."

19. It is evident from the above provisions inter alia that the preliminary enquiry file shall not form part of the formal departmental enquiry file but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. While so, it is obvious and is also admitted by the respondents in the present case that the reason for bringing the PE statements of PWs 1,2,3,5,6 and 7 on record of DE file is that the said witnesses altered those statements during DE and such statements cannot be relied upon. It is not the case of the respondents that those witnesses are no longer available.

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20. We are, therefore, of the opinion that such an action is contrary to the provisions of law noted above, and is therefore, untenable in the eye of law.

21. The aforesaid illegality in the enquiry proceedings which goes to the root of the matter was totally ignored by respondent No.3 in his impugned order dated 28.2.90 (Annexure-C), imposing the penalty in question on the applicant and by the appellate authority (respondent No.2) in his impugned order dated 20.7.90 (Annexure-D) in an arbitrary way without proper application of mind. As the OA can be disposed of, on the above ground No.2 itself, we do not think it necessary to go into other grounds raised by the applicant in the present application.

22. We have carefully considered the matter. In view of the foregoing discussion, we find that the impugned orders in the OA are vitiated by the patent illegality aforementioned. All the 4 impugned orders are, therefore, quashed and set aside. The respondents are hereby directed to restore the forfeited approved 5 years service of the applicant with all consequential benefits within a period of three months from the date of receipt of a copy of this order.

23. The OA is allowed accordingly. No costs.

A. Vedavalli
30/1/96

(Dr. A. Vedavalli)
Member(J)



(N.V. Krishnan)
Acting Chairman