

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. No. 427/90

Date of decision 18, 1993

Rameshwar Dayal

Applicant

Shri Shankar Raju

Counsel for the applicant

vs.

Commissioner of Police & Ors.

Respondents

Shri B.R. Parashar

Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. I.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

The applicant entered the service of the Delhi Police as a Constable on 14.4.59. He was promoted to the rank of Head Constable in the year 1966 and then was further promoted as Asstt. Sub-Inspector in 1978. Ultimately, he was promoted to the rank of Sub-Inspector in 1986. He has thus put in about 30 years of service in the Police Department. On 25/26.8.87 he was posted as Emergency Officer at P.S. Yamuna Vihar when one Qabul Ahmed was brought to him by one chowkidar from a nearby park. The applicant is alleged to have threatened the said Qabul Ahmed to pay him an amount of Rs. 3,000/-, otherwise he will be falsely implicated in a dacoity case. Qabul Ahmed is said to have stated to him that he was coming to Loni Chowk for purchasing

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truck of husk (bhusa), but the bus dropped him at Yamuna Vihar instead of Loni Chowk. As he was not familiar with the roads and typography of the area, he decided to stay at the park at Yamuna Vihar. He is also alleged to have stated that he does not possess the required amount of Rs. 3000/-. Thereupon, it is alleged, that the applicant sent the said Qabul Ahmed alongwith Head Constable Ram Chahal in TSR - DER 6426 to the village of Qabul Ahmed, Mandloi, P.S. Nand Nagri, for bringing th said amount. It is alleged that he brought the amount of Rs. 3,000/- from his house and gave it to the applicant. After that, Qabul Ahmed, was released. Qabul Ahmed submitted a complaint to D.C.P., East District, which was inquired into by the Inspector(Vigilance), East District. After the Inspector (Vigilance), East District, submitted his report, the Additional Commissioner of Police, Range, Delhi, entrustd the departmental inquiry to P.R. Sondhi, ACP in DE Cell by order dated 23.88. In the inquiry, the finding was that the applicant was found to have accepted the illegal gratification of Rs. 3,000/- from Qabul Ahmed. He submitted his findings dated 7.3.89. The disciplinary authority tentatively agreed with the findings of the Inquiry Officer and issued a show cause notice proposing the punishment of dismissal from service on 21.4.89, a reply to which was submitted by the applicant on 22.5.89. After going through the evidence and documents and after affording an opportunity to the applicant, the disciplinary authority found that the pleas taken by the applicant were not convincing. Accordingly, the notice was confirmed and the penalty of dismissal from service was imposed. The applicant was aggrieved by this order of the disciplinary authority. Hence, he challenged it by way of appeal, but the Addl. C.P., Range, New Delhi, and the appellate authority, Additional Commissioner of Police, Nw Delhi, Range, rejected the same on 5.1.90. These two orders are being challenged by the applicant in this O.A. filed under Section 19 of the Administrative Tribunals Act of 1985.

2. 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 the Delhi Punishment and Appeal Rules of 1980 (hereinafter referred as 'Rules').

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They also contended that the grounds taken by the applicant are not correct.

3. Shri Shankar Raju, counsel for the applicant, and Shri B.R. Parashar, counsel, for the respondents were heard. Shri Raju contended that under Rule 16(1), in the departmental inquiry, the order of appointment of the Inquiry Officer has to be passed by the disciplinary authority and it cannot be delegated. He also contended that the Inquiry Officer has himself cross-examined the defence witnesses examined by him and hence, the inquiry is vitiated because the Inquiry Officer cannot be permitted to cross examine. His next contention is that in the appellate order (Annexure A-1), reasons have not been given by the appellate authority. His next contention is that due to violation of Rule 14(4), the disciplinary authority should be competent to award the punishment as prescribed under the Delhi Police Act. His other contention is that the punishment imposed by the authority is not legally prescribed. Shri B.R. Parashar, counsel for the respondents, controverted these arguments and maintained that these grounds urged at the Bar are after-thought.

4. After hearing both the counsel we proceed to decide the O.A.

5. Copies of defence statements of the defence witnesses have been filed by the applicant in which it has been shown that the Inquiry Officer has put questions to the defence witnesses. Rule 16(v) of the Rules provides that the Inquiry Officer shall, if he may wish to, put to the witnesses to clear the ambiguity or to test their veracity. Cross-examination of a witness is quite different from this provision. The questions asked in cross-examination are intended to shatter credibility of the witnesses while the Inquiry Officer can put questions to clear the ambiguity and to test the truthfulness of a particular witness. Shri Shankar Raju calls these questions as questions of cross-examination. On perusal, it is seen that the questions are not in the shape of cross-examination, but in the shape by which details have been asked and the questions are in the nature of checking the veracity of the witnesses. However, the questions put by the Inquiry Officer can be categorised as questions not in cross-examination.

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6. Shri Shankar Raju next contended that the statements of Qabul Ahmed, his wife, Saleeman, and of Safarat Ali should not have been accepted by the disciplinary authority because they are the interested witnesses and have come to depose so that the complaint of Qabul Ahmed may succeed. He also contended that the statement of Ram Chahal, the Head Constable who was in TSR-6426, is in his favour and does not corroborate the testimony of Qabul Ahmed. Undoubtedly, Saleeman is the wife and Safarat Ali the other relation of Qabul Ahmed, but their statements cannot be rejected merely on the ground of relationship with the complainant. The disciplinary authority has accepted the statement of Qabul Ahmed as sufficient, but has also sought for corroboration of the particulars of his statement with the testimony of Saleeman and Safarat Ali. The process of appreciation by the disciplinary authority of these statements cannot be said to be perverse and this contention of Shri Shankar Raju deserves outright rejection.

7. The other contentions of Shri Shankar Raju have no merit. The applicant did not raise these points in the memorandum of appeal when he approached the appellate authority. They thus appear to be after-thought. Even during the time of the inquiry, the applicant did not raise any point before the disciplinary authority challenging the jurisdiction or the competence of the disciplinary authority to proceed with the inquiry. If such an objection has not been raised and the disciplinary authority had no occasion to apply its mind, then certainly this argument can be said to be without any substance. Non-mention of this ground of jurisdiction in the memorandum of appeal further supports the view that the point has been raised as an after-thought. Furthermore, the learned counsel for the applicant could not point out any prejudice caused to him during the inquiry. Rule 6 of the Rules provides for the authorities who are competent to award the punishment. For Inspector and below in rank to it, the Deputy Commissioner of Police and above is competent to award the punishment. Similarly, Constable to Sub-Inspector can be punished by the authority of Asstt. Commissioner of Police. In this view of the matter, it cannot be said that the applicant in any

view that this O.A. has no merit. We, therefore, dismiss it with no order as to costs.

I.P. Gupta
(I.P. GUPTA) 18/1/93

MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)

VICE-CHAIRMAN (J)

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manner has been prejudiced because the departmental inquiry was conducted by the authority other than the one mentioned by the learned counsel for the applicant. Annexure A-3 is the order passed by the Deputy Commissioner of Police, East District, Range, Delhi, with by which he has ordered that the delinquent shall be dealt dealt departmentally under Section 21 of the Delhi Police Act by an officer to be nominated by the DCP/DE Cell and findings be sent to DCP/ East for final orders. This order was neither challenged nor questioned by the applicant either during the inquiry or during the appeal. The rank as indicated is in accordance with Rule 6 of the Rules and by no stretch of imagination it can be said that the applicant has been prejudiced in this departmental inquiry.

8. We have carefully perused the grounds on which the appellate authority has passed its order. None of the points were raised before the appellate authority for its consideration. If the objections with regard to jurisdiction or power are not raised either at the time of the inquiry or at the time of the appeal, even if they exist, these shall be deemed to have been abandoned. In the departmental inquiry only this much has to be seen as to whether the principles of natural justice were observed or not. On perusal of the entire record, we are of the view that the disciplinary authority before imposing the penalty had provided opportunity of hearing to the applicant which was availed by him. The appellate authority has also in its order dealt with the grounds. The contention of Shri Shankar Raju that the appellate order is not a speaking order is without substance because the appellate authority has gone through the grounds of appal raised and other relevant records in great detail. Furthermore, the appellate authority heard the applicant in person on 22.12.89 and was of the view that no convincing point to change the punishment has been brought before him and the appellate order need not be like that of a court of law. In the departmental hierarchy, if the principles of natural justice have been observed, then those orders have to be upheld.

9. In the conspectus of the above discussion, we are of the

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view that this O.A. has no merit. We, therefore, dismiss it with no order as to costs.

I.P. Gupta
(I.P. GUPTA) 18/1/93

MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)

VICE-CHAIRMAN (J)