

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 470/90
T.A. No.

199

DATE OF DECISION 30-8-1993

Sh. Anand Prakash Sharma

Petitioner

Sh. V.P. Sharma

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors through the

Respondent

Secretary, Delhi Admin.

Advocate for the Respondent(s)

Sh. M.C. Garg

CORAM

The Hon'ble Mr. I.K. Rasgotra, Member(A)

The Hon'ble Mr. B.S. Hegde, Member(Judicial)

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

JUDGEMENT

(Delivered by Sh. B.S. Hegde, M(J))

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing the impugned orders dated 4.7.89 (Annexure A-1), 8.9.89 (Annexure A-2) and 9.3.90 (Annexure A-4) respectively as illegal, unjust, and against the principle of natural justice.

Skipped
2. The applicant was initially appointed as Constable in the Delhi Police in the year 1963 and presently he has been working as Assistant Sub Inspector. It is on record that he has been awarded merit certificates by the senior Police Officers on

many occasions. In the year, 1987, the applicant was posted at Police Station, Lajpat Nagar and was deployed at Police Post, Amar Colony. The case of the petitioner is that on 7.4.88 (Annexure A-6) the applicant was on his night duty to check the alertness of the Police patrolling staff and found that one Constable namely Sh. Khem Chand was sleeping on duty with the arms and ammunition and the applicant has sent the report of sleeping of Constable Khem Chand to the S.H.O., Lajpat Nagar. On the basis of the report submitted by the applicant, Competent Authority suspended Sh. Khem Chand from duty and departmental enquiry was ordered against him. Learned counsel for the applicant submits that Sh. Khem Chand, constable wanted to take revenge against the applicant and he made a false and fabricated complainant against the applicant with the help of one lady namely Smt. Vimla Sharma w/o Sh. Gopi Ram resident of Durga Mandir, Garhi, Sabji Market, Lajpat Nagar, New Delhi. It is submitted, that Smt. Vimla Sharma is Bhabhi of Constable Khem Chand and this complaint was filed against the applicant after a lapse of 1½ years of the alleged incident of May, 1987 which clearly shows that the alleged complaints are fabricated, on the basis of false facts and have no legal force. On the basis of the complaint filed by Smt. Vimla Sharma a preliminary enquiry was ordered against the applicant and statement of the following persons were taken behind the applicant. In the preliminary enquiry report submitted at annexure A.13 in which the relevant part of the finding is as

under:-

" In this conclusion, we can that allegation could not be proved for 5.5.87. Nevertheless, The Deputy Commissioner of Police ordered the departmental enquiry under rule 15(2) of Delhi Police(Punishment and appeal) Rules, 1980 vide order dated 4.7.89 (Annexure A-1).

There after Inspector Balbir Singh was appointed as Enquiry Officer who issued a summary of allegations and impugned charge sheet to the applicant (Annexure A-2)

3. The main contention of the applicant is that enquiry officer conducted the enquiry without giving any chance to the applicant to engage his defence which is a mandatory requirement of the rules. Six witnesses were examined their names are given as under:-

1. Smt. Vimla Sharma w/o Sh. Gopi Ram Sharma
2. Sh. Laxman S/o Sh. Shyam Lal
3. Smt. Raj Rani w/o Sh. Manmohan Singh
4. Sh. Vijay Kumar S/o Sh. Jiwan Kumar
5. Km. Sashi Sharma d/o Sh. Gopi Ram Sharma
6. Smt. Nirmal Verma, SHO, P.S. Lodi Colony.

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The learned counsel for the applicant drawn our attention that Shri Gopi Ram and Km. Kusum Sharma d/o Sh. Gopi Ram names were listed but they were not called in the witness box in front of Enquiry Officer. He further submitted that the allegation against the applicant are to be proved by the complainant and by these two

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witnesses and therefore, and hence the allegation against the applicant cannot be proved merely on the statement of complainant which is proved subsequently that she has supported the version of the applicant.

4. The counsel for the applicant further submitted that the witnesses and the documents which are relied upon in the Departmental Enquiry and in the complaint filed by Smt. Vimla Sharma before the criminal court, New Delhi are one and the same and therefore, if the applicant is compelled to adduce his evidence in the departmental enquiry then it amounts to disclosure of the defence which may harm his case in criminal complaint filed by the complainant.

5. The Enquiry Officer examined six witnesses, except the husband of the complainant Shri Gopi Ram and Km. Kusum Sharma d/o Gopi Ram, though names were lossed but they were not called in the witness Box, thereby the applicant lost the right to cross examined as they were the matured witnesses.

6. The charge against the applicant

is that the applicant, Anand Prakash Sharma ASI No. 2634 while posted at Police Post, Amar Colony of Lajpat Nagar, dealt with a complaint of Smt. Vimla Sharma w/o Sh. Gopi Ram, against Sh. Luxmi Chand and Vijay Kumar resident of Garhi, Lajpat Nagar on 5.5.87. The applicant visited the house of Smt. Vimla Sharma several times and refused his official position and developed illicit relations with her. He also took her to Room No. 11 of Holiday Inn, Safdarjang Enclave and had sexual intercourse with her over there. The above act of the applicant amounts gross misconduct, direction in duty & unbecoming of a govt. servant as per Rule 3(1) & (iii) of CCS Conduct Rules 1964 and makes you liable for punishment under section 21 of the Delhi Police Act, 1975

7th The contention of the petitioner

is that he has been wrongly implicated in the charge that he has developed illicit relations

with one Smt. Vimla Devi Sharma and he was charge-sheeted on the basis of the preliminary enquiry report. On his approaching, this Tribunal, after considering the case, the Tribunal passed an interim order on 23.3.1990 by which the respondents were directed to restrain from proceeding further with the enquiry proceedings. Accordingly, the Enquiry proceedings just came to halt. The relief sought by the applicant is that the charge-sheet served on him should be quashed in the facts and circumstances of the case. During the course of enquiry it was brought on record that the applicant has not visited the house of alleged Smt. Vimla Sharma and the said charge has been denied by the complainant herself during the disciplinary enquiry while giving the reply to cross examination.

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8. In her reply Smt. Vimla Sharma (Annexure A-5) has squarely stated that she made this complaint on the instigation of her "Dewar" Khem Chand and that she does not know the contents of the report. She denied that the applicant has visited her house and on the other hand she along with her husband went to the Police Station in order to lodge the complaint against one Lakshman. She also denied that she visited Kalkaji Temple along with the applicant and never visited 11, Holiday Inn, Safdarjang Enclave along with the applicant, on the other hand, she has stated that she visited the Holiday Inn, Safdarjang Enclave along with Inspector Smt. Nirmal Verma. She has clearly stated that the applicant has never visited her house. On perusal of the entire evidence given by her during disciplinary enquiry, it is apparent, that the complaint against the applicant was a fabricated one which was made at the instance of her Dewar against whom the applicant has sent a report that he was negligent while on duty on a particular day. This fact has borne out in the preliminary enquiry report. The material witnesses Shri Gopi Chand Ram and Km. Kusum Sharma has not called as a prosecution witnesses. Thus the charge levelled against the applicant has not been proved.

9. The reply given by the respondents is not only cryptic but also vague and does not amount to any denial of averment of fact that the petitioner has made. The respondents contended that the record of the applicant is good and he has been awarded many a time for good work. Further, in the preliminary enquiry, the daughter of the complainant and the husband has stated that the applicant has some relation with the complainant. That being the pivotal issue, Enquiry Officer ought to have called these two relevant witnesses before the Enquiry Officer but he intentionally did not call for giving evidence. Since the complainant herself denies the charge leveled against the applicant and the content of the said complaint has not been corroborated by any relevant witnesses, as such, we cannot give any credence to the complaint. As a matter of fact, in order to substantiate the complaint against the applicant, Enquiry Officer ought to have examined the statement of the husband of the daughter of Smt. Vimla Sharma, but they were not examined by the Enquiry Officer. Failure to do so, the right of the applicant to cross-examine the aforesaid witnesses is being lost exhaust.

10. The learned counsel for the applicant in support of his contention, cited various decisions of the Tribunal which are given below:-

12 ATR 1990(1) CAT 373

ATR 1990(1) /197

ATR 1986 (1) CAT 424

1986(2) SLR Cal.185

In a Calcutta case, it is observed that there may not be any fixed principle for not entertaining any writ position before the departmental proceedings are finally concluded. If a delinquent officer can satisfy the writ court that the departmental proceedings is vitiated either for violating the principles of natural justice or for not following the procedure relating in gross injustice to the petitioner, it will be quite open to the writ court to interfere and quash the departmental proceeding even at the intermediate stage so that a proper proceeding is started and delinquent officer does not suffer unnecessary agony for a prolonged period. In another case, it was held that there may be grave suspicion against the delinquent but mere suspicion cannot take the place even in a domestic enquiry.

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11. We have heard the arguments of both the counsel and gone through the pleadings and records. Keeping in view of the aforesaid observation of the courts in the instant case, it is an indisputed fact that the complainant herself has stated before the Enquiry Officer that the charges levelled against the applicant was not correct and the complaint was lodged at the instigation of Shri K hem Chand and she denied all the allegations levelled against the applicant / enquiry . The charge against the applicant that she had developed illicit relations with the complainant have not been proved which is clear from the findings of the Enquiry Officer stating that the allegations could not be proved from the incident dated 5.5.87 but from the statement of her husband and daughter stating that ASI Anand Prakash and Smt. Vimla Sharma had some relations. This allegation can be proved only by examining the husband and daughter of the complainant which has not been done in the instant case. It is apparent, that in the preliminary enquiry the charge against the applicant has not been established.

12. In view of the above, we are of the opinion, that the principles of natural justice have been

violated in this case. The petitioner having not been given reasonable opportunity to defend himself, there being no evidence to the charge framed against him, as per report submitted by the enquiry officer. We accordingly, set aside and quash the impugned orders dated 4.7.1989 and 9.3.90 (Annexure A-2 and A-4) which are not only illegal and unjust but against the principle of natural justice. Since the complaint filed by the complainant on the same ground is still pending with the criminal court, it is not in the interest of the petitioner/applicant that the departmental proceedings should be allowed to continue on the very same charges. Therefore, the same is required to be quashed. Though, normally the Tribunal is reluctant to interfere with the departmental proceedings till it is completed but in the instant case the findings of the guilt arrived at by the disciplinary authority is not based on any evidence.

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13. In the facts and circumstances of the case, we are of the opinion, that the same is required to be quashed and we accordingly quash and set aside the entire disciplinary proceedings and direct the respondents to reinstate the applicant within a period of three months on receipt of this order with all consequential benefits. O.A. is allowed with no order as to costs.


(B.S. HEGDE)

MEMBER(J)


(I.K. RASGOTRA)

MEMBER(A)