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CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A.NO. 781/90. DATE OF DECISION 3.8.1993

SHRI ANANDI PARSHAD — Petitioner

SHRI A.K. AGGARWAL, — Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS — Respondent

MRS. AVNISH AHLAWAT, — Advocate for the Respondent(s)

CORAM

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

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✗
2. To be referred to the Reporter or not ? ✗
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 ? ✗

J_U_D_G_E_M_E_N_T

(Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial))

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs :-

(1) That the Enquiry Proceedings initiated against the applicant be declared illegal, contrary to law, inviolation of Principal of Natural Justice and illegal.

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(2) That it should be declared that the applicant is innocent of the charges and has been falsely implicated by Smt. Kesari Devi and the material on record clearly proves that the applicant is innocent and has not committed any misconduct in employment.

(3) That the above mentioned orders issued by the Additional Commissioner Police (Operations Delhi W.No.37610/17/vig HA II Dated 13.10.1988) and order and No. 6599-6615/HAP - PCR dated 5th December, 1988, be quashed and set aside.

(4) The impugned order No. 138-40 P.S.C. (Ops) Dated 1st February, 1990 issued by Shri T.R. Kakkar, Additional Commissioner of Police (Operations) also be quashed.

(5) The respondents be directed to pay the salary to the applicant without any deduction from the salary and not to stop any increments in future on the basis of above mentioned orders.

(6) That the respondents be directed to promote the applicant on the post of A.S.I. with retrospective effect from September/October 1988 with all consequential benefits.

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2. The brief facts of the case are that the applicant was initially appointed in the Border Security Force in the year 1969 as a constable. The services of the applicant on the requisition of Delhi Police were absorbed in Delhi Police as a constable with effect from 1.3.1970 on permanent basis. He was promoted as Head Constable w.e.f. 18.6.1979 and worked in that capacity till 1988. On 6.6.1988, the applicant was placed under suspension without any Memo., charge-sheet or show-cause notice. The main contention of the applicant is that he was placed under suspension but neither any charge-sheet nor any show-cause notice was served. The Additional Commissioner of Police was pleased to issue order dated 24.6.1988 on the basis of alleged preliminary enquiry alleged to have been conducted by the Vigilance Department without any opportunity of being given in the matter and had referred the case to DCP for conducting departmental enquiry on the basis of the complaint made by one Smt. Kesari Devi. However, on 28.9.1988, DCP (West), New Delhi reinstated the applicant in service with effect from that date without prejudice to the departmental inquiry. A departmental enquiry was initiated under

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Section 21 of the Delhi Police Act, 1978 against the applicant and Shri Balwan Singh was appointed as Departmental Inquiry Officer vide dated 5.12.1988 (Annexure 'C'). The applicant was asked to attend the inquiry proceedings to be held on 19.12.1988 and the Inquiry Officer recorded statement of various witnesses who were cross examined by the applicant as well.

3. The contention of the applicant is that the statements recorded by the Inquiry Officer, on the basis of the charges framed were not proved and there are material contradictions regarding the allegations levelled against the applicant, nevertheless, the Inquiry Officer gave the findings against the applicant alleging that the charges have been proved. On the basis of the findings of the Inquiry Officer, the applicant was punished by the Additional Commissioner of Police who is the disciplinary Authority vide his order dated 13.10.1988 against which the applicant had preferred an appeal to the appropriate authority. The Appellate Authority passed the order dated 1.2.1990 without going through the merits of the case and material on record.

, Appellate Authority upholding the punishment of two increments for a period of two years as ordered by the Disciplinary Authority, however, inclined to modify the order of treating the period under suspension in respect of the Head Constable Anandi Parsad No. 362/PCR for that period spent on duty for all purposes vide order dated 1.2.1990.

4. The respondents, in their reply, have narrated the circumstances under which the applicant had been placed uhder suspension and the enquiry was initiated against him for not performing the official duty in accordance with the provisions of the Delhi Police Act. The applicant, while working as duty officer in Police Station, Saraswati Vihar on 8.3.1988 at 9.00 P.M. recorded on a plain paper, the complaint of Smt. Kesari Devi about the burglary committed in her house on the night of 6.3.1988. Smt. Kesari Devi suspected her neighbourer Jagdish son of Shri Hazari Lal resident of J-361, J.J. Colony, Sukhurpur, Delhi for this burglary. The complaint was that the Head Constable Anandi Prashad did not register the FIR according to Section 154 Cr.P.C. and did not take any action against Jagdish Prasad and also did not give a copy of the

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statement of Smt. Kesari Devi so recorded by him on plain paper. On the contrary, the applicant had summoned Smt. Kesari Devi and her son Lal Chand to Police Station on the complaint of Jagdish Prasad s/o Hazari Lal whose name was mentioned by Kesari Devi for burglary in her house. It is stated that Hazari Lal F/o Jagdish Prashad had paid Rs. 9500/- to Smt. Kesari Devi to excuse his son for this theft. The ASI alleged to have pressurised and harassed Smt. Kesari Devi and her son Lal Chand in the Police Station to return the amount of Rs. 9500/- with ulterior motive. For this misconduct and negligence, the applicant was placed along with ASI Nand Ram under suspension. Departmental enquiry was initiated under rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 and the Inquiry Officer found them guilty. The Disciplinary Authority agreeing with the findings of the Inquiry Officer, reduced the pay of both Nand Ram and Anandi Prashad from Rs 1410/- to Rs. 1350/- and so far as the applicant is concerned from Rs. 1180/- to Rs. 1125/- respectively for a period of two years with effect from 5.12.1989 which have been upheld by the Appellate Authority. However, the case of the applicant that his suspension period was treated as spent on duty for all purposes.

5. We have heard the arguements of the counsel of both the parties and perused the pleadings and records of the case. It is an undisputed fact that the complaint made by Smt. Kesari Devi had not been recorded either in Roznama nor filed any FIR on the basis of the complaint preferred by Smt. Kesari Devi. The main contention of the applicant is that Inquiry Officer had not discussed the evidence rendered by PW-I and PW-II while coming to a conclusion that the charge against the applicant is proved. On perusal of the evide-nce, though it is written in Hindi, we find that PWI has clearly stated that her son accompanied her to Police Station to lodge the complaint. The plea taken by the applicant in this case is that she had never gone to the Police Station to complain about the theft which has been disproved by various corroborative evidence. Even the evidence of PW-I, son of the complainant also corroborate the statement of PW-I that he and his mother along with others went to Police Station to lodge the complaint. Even in cross-examination, he reiterated that he had gone along with his mother. On perusal of the findings of the Inquiry Officer, we do not find

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any irregularity in the procedure adopted by the Inquiry Officer and the applicant had been given sufficient opportunities to rebut the allegation. When the PW-I was cross-examined, she identified that Shri Anandi Prashad, who was sitting on chair and table when she had gone to lodge the report along with her son, he had assured her to record her report. She refuted the suggestion of the defaulter constable Anandi Prashad that she had not seen him earlier though her complaint was recorded on a plain paper by Anandi Prashad but it was not recorded in the register. DW-I Shri R.S.Chadha stated that Jagdish, a relation of Smt.Kesari Devi,called a meeting of his community persons which was attended by about 300 persons. In this meeting, Smt.K esari Devi blamed Jagdish for this. Initially she deferred to lodge a report with the Police and demanded justice from the panchayat. Ultimately some people of the locality put pressure on the father of Jagdish and on the basis of the decision of the Panchayat who gave Rs 9500/-to K-esari Devi to compensate her loss. Thereafter, Jagdish filed a report to the Police. The Inquiry Officer, while discussing the various evidences, stated that defaulters have not disputed the occurrence of the theft in their defence. The discrepancy in the statement of PW-I and PW-II if at all

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has been clarified by PW-II in his cross-examination stating that he had gone to the Police Station along-with his mother to lodge the complaint. Both have stated that they had gone to Saraswati Vihar Police Station at 8.30 PM on 8.3.1988 but their case was not registered by Anandi Prashad, Duty Officer.

6. Considering the various evidences that were led in, it cannot be said that the finding of the Inquiry Officer is frivolous and perverse it is proved beyond doubt that the theft had taken place on 6.3.1988 in the house of Smt. Kesari Devi and on their return from Rajasthan they did go to the Police Station to report the theft. At that point of time, the applicant was present who had taken the complaint on plain paper, not given a copy of the complaint to the complainant. The contention of the applicant that she did not visit the police station on 8.3.1988 is not borne on facts. In the circumstances, it is not open to this court/Tribunal to re-appraise the evidence already considered by the appropriate authority under the rules and the charges framed against the applicant have been squarely proved

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beyond doubt and there is no reason to interfere with both the findings of the Disciplinary Authority or the Appellate Authority as the case may be. The Supreme Court in Kraipat's case held that it is the preponderence of evidence which has to be the basis of the findings in a disciplinary proceedings and the standard of proof required in a criminal proceedings not necessary in a departmental inquiry. Again the said view has been further elaborated by a later decision of the Supreme Court in Union of India vs. Parma Nanda [AIR 1989 SC 1185] wherein the Supreme Court has observed that "in an original proceeding instituted before the Tribunal under Section 19, the Tribunal can exercise any of the powers of a civil court or High Court. The Tribunal thus could exercise only such powers which the civil court or the High Court could have exercised by way of judicial review. It is neither less nor more. Because the Tribunal is just a substitute to the civil court and High court. The Administrative Tribunal cannot, therefore, interfere with the penalty impost on a delinquent employee by the competent authority on ground that the penalty

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is not commensurate with the deliquency of the employer. The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an inquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. ..... The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence."

7. In the light of the above findings of the Supreme Court, we are of the view, that we do not find any irregularity in the findings of the Inquiry Officer or the Disciplinary Authority in this case. As proposed

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earlier, unless the plea of the mala fide is proved normally the Tribunal is reluctant to interfere with the findings of the Disciplinary Authority. In the circumstances of the case, we justify that no interference is called for. Accordingly, we find that the petition is devoid of any merit and the same is dismissed, however, with no order as to costs.

(B.S. Hegde) 3/8/93
Member (J)

(I.K. Rasgotra) 3/8/93
Member (A)