

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 841/1990

NEW DELHI, THIS ~~Third~~ DAY OF ~~OCTOBER~~, 1994

SHRI N.V.KRISHNAN, VC(A)
SHRI C.J. ROY, MEMBER(J)

Naresh Kumar
s/o Shri Tara Chand
D-121, New Police Lines
Kingsway Camp, New Delhi-110 009 .. Applicant

By Advocate Shri Shankar Raju

VERSUS

Union of India, through

1. Secretary
Ministry of Home, North Block
New Delhi
2. Commissioner of Police
Police Headquarters
I.P.Estate, New Delhi .. Respondents

By advocate Mrs. Avnish Ahlawat

ORDER
(hon'ble Shri C.J. Roy, Member(J))

In this application, the applicant has challenged the order dated 26.4.89 (Annexure E) by which he was dismissed from service and the orders dated 28.7.89 and 22.2.90 (Annexure F & G) by which his appeal/revision petition were rejected.

2. The brief facts leading to the filing of this OA are that the applicant, who joined his service with R-2 in December, 1980, while posted in Kingway Camp police post on 21.4.88, was detailed for protection duty at the residence of one Shri Charan Singh, alongwith ASI and a Head Constable, to enable Shri Charan Singh construct a compound boundary wall for his house as the latter was apprehending some trouble in carrying out the said work. When the applicant and the two other police staff found a mob of about 20

people at the spot outside the residence of the said Charan Singh to prevent the construction, they advised Charan Singh to await the arrival of SHO, Kingsway Camp for proceeding with the work. Since Charan Singh and his party were adamant to go ahead with the construction, it resulted into a quarrel between the two groups and the applicant at the instance of ASI caught hold of Charan Singh from his shoulder and made him to stand up from the place. Charan Singh felt humiliated in presence of his village men. In the meanwhile the PCR van also arrived at the spot with SI Jawahar Singh and a constable. After sometime, the SHO also reached the spot and made enquiries, and left instructions to Charan Singh not to proceed with the construction till the visit of SDM or Patwari at the site. After this, the applicant and the other staff returned to the police station.

3. Thereafter, it is stated, that Charan Singh made a complaint on 13.4.88 to the SDM, in which the Addl. DCP(North) made an endorsement to the effect that "some police men have allegedly extorted some money from him (complainant). Please look into it and report" and marked the same to SHO. On 23.4.88, the SHO called the complainant and the applicant to the police station and on being identified by the complainant, reported that it was the applicant who had extorted Rs.600/- from the complainant, as a result of which the applicant was suspended on 26.4.88 and a departmental enquiry was started against him. The Enquiry Officer (EO) submitted his report on 28.11.88 (Annexure B) concluding that the charge

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against the applicant was not proved. As against this, the DCP(North) issued a show cause notice dated 23.2.89 (Annexure C) to the applicant asking him to explain why he should not be removed from service. The applicant gave a detailed reply on 8.3.89 (Annexure D). However, the impugned dismissal order was passed on 26.4.89. The applicant preferred an appeal/revision petition, which were rejected on 28.2.89 and 22.2.90, respectively. Hence this application with the prayers for quashing the Annexure E, F & G orders and to direct the respondents to reinstate the applicant in service with full back wages and all consequential benefits.

4. The proceedings have been challenged on a number of grounds. The principal ones are as follows:

- i) The reasons for disagreeing with the EO's report are flimsy and whimsical;
- ii) The identification of the applicant was improper;
- iii) The finding of the EO that the applicant has been framed due to grudge has been rejected without reason; and
- iv) No credence has been given to the defence evidence

5. The respondents have filed their reply justifying their action. They contend that the enquiry has been conducted properly and the disciplinary authority has given clear reasons for his disagreeing. The appellate authority has also properly considered the appeal. Therefore, the OA has to be dismissed.

6. The applicant has filed a rejoinder more or less reasserting the same points raised in the OA.

7. We have heard the learned counsel for the parties and perused the records. **The charge-sheet against the applicant reads as follows:**

"I, Suchindra Singh, Insp. of DE Cell (Vig.) charge you Const. Naresh Kumar, 1370/N that on 21.4.88 you extorted Rs.600/- from Shri Charan Singh S/o Sh. Rattan R/O 104, Village Dhoka K.W. Camp, Delhi for allowing him to construct compound boundary wall of his house. Thereafter, you were also identified by the complainant Sh. Charan Singh in front of Insp. Manuel SHO/K.W. Camp on 23.4.88 at PS K.W. Camp, Delhi. Your above act amounts to grave misconduct and unbecoming of a Police Officer which renders you liable for punishment u/s 21 of D.P. Act, 1978"

The charges would not have been framed in the first instance had a prima facie case not been made out by the prosecution witness. Nevertheless the EO came to the conclusion that the charge was not proved. Disagreeing with the finding, the disciplinary authority issued Annexure C show-cause notice, relevant extract of which is reproduced below:

"The D.E. was completed by Insp. Suchindra Singh of D.E. Cell who submitted his finding dated 28.11.88 not holding the defaulter guilty of the charge. I have carefully gone through the D.E. file, EO's finding and other relevant documents on record and disagreeing with the

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finding of E.O., as he has failed to assess the prosecution evidence properly. The PWS including complainant have clearly deposed that the delinquent Constable had actually extorted Rs.600/- from the complainant. Therefore, considering the evidence brought on record, I propose to remove the delinquent Constable from service. His suspension period from 26.4.88 will also be treated as not spent on duty."

8. We are unable to appreciate the ground that this is flimsy and whimsical. In our view the applicant has been given the notice in terms of Rule 16(xii) of the Delhi Police(Punishment & Appeal) Rules, 1980. Brief reasons have been given.

9. After considering the applicant's reply, the disciplinary authority passed a well considered order. Extracts are reproduced below:

"The D.E. was completed by Insp. Suchidra Singh of D.E.Cell who submitted his finding dated 28.11.88 not holding the defaulter guilty of the charge. I have carefully gone through the D.E. file, E.O's finding and other relevant documents on record and disagree with the findings of E.O. on the following grounds:

i) There is a discrepancy in the time of arrival of SHO/Kingsway Camp as stated by SHO himself and the DWS. The DWS stated that SHO/Kingsway Camp came to the spot at around 2.45 PM and stay there till 5 PM whereas SHO says that he reached the spot at about 5 PM

ii) According to the E.O. the allegations are an outcome of grudge for having faced humiliation in front of the crowd by Sh. Charan Singh. Had this been the case than the allegations would have been against the ASI, Head Constable and Constable (all the three rather than against Constable Naresh Kumar). Hence, this plea is not well founded as defaulter alone had gone to the house of complainant and extorted Rs.600/-.

iii) Shri Charan Singh, PW-I has clearly stated that ASI Dalal Singh, HC Tilak Ram accompanied by the defaulter came to his house. After some time all the three police persons left his house and went to the house of Nambardar. Thereafter, the defaulter Constable Naresh Kumar No.1370/N returned to his house alone and extorted Rs.600/-. Insp. Manual, PW-II also

stated that the complainant identified the defaulter in his presence who had extorted Rs.600/- from him and clarified during cross-examination made by the defaulter.

iv) When the complainant was called in the Police Station by the SHO, he identified only the defaulter Constable who extorted Rs.600/- from him and not others. The defaulter Constable did not raise any objection at the time of identification in front of SHO/Kingsway Camp."

10. It was contended that all the reasons mentioned in the order were not stated in the Annexure C show cause notice. That is not required. For, only brief reasons have to be stated. The brief reason was that he failed to assess the P.W. evidence properly. The learned counsel could not establish that what has been stated in the final order is not supported by the evidence of P.Ws in the case.

11. We find that, nodoubt, the enquiry officer has found the charge against the applicant was not proved but the EO has not properly discussed the evidences. It is clear from the depositions of the PWS, which include the complainant, Inspector Manuel, SHO and ACP, Kingsway Camp, who were cross-examined by the applicant also, that the applicant went to the complainant and warned him that he could only carry out the construction if he (complainant) pays the applicant Rs.1000/- upon which the complainant expressed his inability to part with such a big amount, he being a poor man, but still the applicant took Rs.600 from him. The complainant also identified the applicant when he went to the Police Station on 23.4.88 to give deposition. On cross examination by the applicant, the complainant admitted that the applicant came to him alongwith other two police

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officials, but all of them left after sometime and the applicant alone came to him again and told that he was a beat officer of the area. The complainant also deposed that he had not met the applicant before 21.4.68, i.e. the date of incident. We also find that the applicant had not raised any objection when the complainant identified the applicant in the presence of the SHO.

12. Thus we find that the disciplinary authority has given proper reasons for coming to his conclusion before awarding the punishment and we do not find any infirmity with the decision of the disciplinary authority.

13. We also do not find any merit in the contention of the applicant's counsel that the authorities ought to have appreciated that when the atmosphere at the spot/site was surcharged with great tension and fear of breach of peace, the applicant could not have dared to ask for money much less accept it and that too in the presence of his immediate senior officers and the members of the public, because whatever the incident that has happened in a particular place, only those persons available there should have to be examined. It need not be that a chance witness should be examined, unless he was present there. It was left open to the applicant to bring an independent witness to prove his innocence which he had failed to do.

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Therefore, this argument can not be claimed as a ground in support of his case. No independent witness was examined.

14. We also find that the appellate authority has issued a speaking order while rejecting the revision appeal when he says as follows:

"I have gone through the appeal, parawise comments and other relevant records. A personal hearing has also been accorded to the appellant. I fully agree with the reasoning and decision of the disciplinary authority. The pleas advanced by the appellant are without any substance. The failure of appellant to protest when he was identified by the complainant as the person who extorted Rs.600 shows his guilty mind. I do not see any convincing ground to accept the appeal and disagree with the decision of disciplinary authority. The appeal is therefore rejected"

15. We, therefore, do not see any merit in the case and we are of the opinion the applicant has not made out a proper case for our interference. The OA is therefore dismissed with no order as to costs.

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(C.J. ROY)
MEMBER (J)

V.Krishnan
3/10/94

(N.V. KRISHNAN)
VICE-CHAIRMAN (A)

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