

(11)

Central Administrative Tribunal
Principal Bench

....

O.A. No. 1416/91

New Delhi, this the 28th day of August, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri Som Pal Singh s/o Shri Maha Singh,
r/o FC-20, Type-I, Tin Murti Police Compound,
New Delhi.Applicant

(By Shri Shanker Raju, Advocate)

Versus

1. Delhi Administration, Delhi through Chief Secretary, Delhi Admn., 5, Sharnath Marg, Delhi.
2. Commissioner of Police Delhi, M.S.O. Bldg., Police Hqrs., I.T.O. Complex, New Delhi.
3. Additional Commissioner of Police Range (North), Police Hqrs., M.S.O. Bldg., ITO Complex, New Delhi.
4. Addl. Deputy Commissioner of Police (North), Civil Lines, Delhi.Respondents

(By Shri Vijay Pandita, Advocate)

ORDER (ORAL)

By Hon'ble Shri J.P. Sharma, Member (J):

The applicant was served with the summary of allegations for his gross mis-conduct which he, while posted at P.S., I.S.B.T., committed on 13th August, 1989 when he took one Ms Kusum & Raj Kumar of village Sarai Khawaja, District Faridabad (Haryana) from I.S.B.T.

in three wheeler scooter threatening them that they would be locked-up. He left Sh. Raj Kumar, the companion of Ms Kusum, on the way at India Gate and took the girl to a deserted place in the area of P.S. Chanakaya Puri, New Delhi where he dragged Ms Kusum into the bushes and tried to molest her. He tried to outrage the modesty of Ms Kusum but could not succeed in his attempt and he escaped leaving the girl who was taken in custody by the staff of P.S. Chanakyapuri, New Delhi. The girl was sent to her house as because this misconduct was totally unbecoming of a member of a citizen. Departmental enquiry proceedings under section 21 of Delhi Police Act, 1978 were initiated against him and the police witnesses were examined of P.S. Chanakyapuri as well as the S.H.O., Kashmere Gate, A.C.P., Sadar Bazar and Inspector Jai Bhagwan but the girl and boy did not support before the Enquiry Officer. Relying on the testimony of the police witnesses the girl also gave a statement and charge was framed against the applicant. The applicant has not given any defence evidence but he submitted his defence statement. The Enquiry Officer held the applicant guilty of having committed misconduct amounting to moral turpitude by committing an act of enticing away between the night of 13/14th August, 1989 the girl Ms Kusum along with one Raj Kumar who was left on the way in the India Gate and the girl was taken in the bushes of P.S. Chanakyapuri, New Delhi where her modesty was outraged. The disciplinary

le

authority, therefore, by the impugned order dated 11.7.1990 proposed the punishment of removal from service and the appeal against the same was dismissed by the A.C.P. by order dated 9.11.1990 and the revision was also dismissed on 21.5.1991. The applicant in this O.A. has prayed for quashing of these orders.

Shri Shanker Raju appears for the applicant and Shri Vijay Pandita appears for the respondents along with departmental file. The respondents in their reply have stated that the witnesses Ms. Kusum and Raj Kumar, was won over or that they were not emboldened the courage to depose against applicant being a member of the Police force at one point of time but the testimony of the respectable police officers cannot be lightly brushed away but at no point of time any enmity relations have been alleged against those police officers who deposed against him. It is said that the applicant did not deserve to be member of the police force. The respondents have taken a specific stand in the counter that though the applicant was ^{not} named by Ms. Kusum in her statement while recorded in DD No. 88 of 14.8.1989 but the applicant was subsequently identified by the girl and Raj Kumar in presence of the mother of the girl at P.S. Kashmeregate on 16.8.1989. The applicant in the rejoinder has denied the fact.

be

We heard the learned counsel for the parties at length earlier also on 2.6.1995 when the order was reserved. But since the departmental file was not coming forth the case was again put up for re-hearing and hence it is listed today. Again we enquired from Sh. Vijay Pandita counsel for the respondents as to whether the memo of identification of the applicant by the girl Kusum and Raj Kumar who are alleged to be enticed away by the applicant from P.S. ISBT when they arrived from their village from Faridabad in Haryana. No such identification memo has been produced before us. A person can be named by the name or by the features he possesses physically. His features are noted by the victim ^{when} and/such person is brought before the victim he identifies the person connecting him with the misconduct or crime.

It was, therefore, necessary in this case to find out the identification memo or any report of identification noted on 16.8.1989. The applicant's counsel, during the course of the hearing, has filed D.D. No. 10 dated 16.8.1989 at P.S. I.S.B.T. which goes to show that the applicant gave a ring at 2.30p.m. that he is getting treatment from the dispensary and will file the medical certificate. He also enclosed a prescription of dispensary. In view of the fact that the proper facts have not been

jc

(15)

placed before us by the respondents, we remand the matter after quashing the orders of the revisional authority and appellate authority to again consider whether any identification was held on 16.8.1989 in which the applicant was identified by the victim and Raj Kumar by S.H.O., Inspector and A.C.P. though there are statements of these persons before the Enquiry Officer but whether any note was made in the D.D. at the P.S. Kashmeregata where the alleged identification is alleged to have taken place that fact is not coming before us.

We are not quashing the order passed by the disciplinary authority basically because the applicant's counsel has raised certain objections regarding the non-supply of the report of the Enquiry Officer as was laid down by the instructions issued by the Commissioner of Police in March, 1990 before passing any order imposing punishment on the report of the Enquiry Officer. The punishment in this case was passed in July, 1990 and copy of Enquiry Officer was given subsequently. In view of the circumstances and facts, the applicant could not have substantially assailed that matter also but he has now been given the Enquiry Officer's report at the time of order of disciplinary authority. In the fairness, just and equity, we, therefore, remand the matter to appellate authority to consider all these aspects, though there

is statement of ACP, Inspector Jai Bhagwan as well as of A.S.I. On Parkash before the Enquiry Officer that the girl and Raj Kumar identified the applicant in their presence but whether these statements were corroborated by any testimony is to be seen by the appellate authority. The appellate authority, therefore, will consider all these aspects.


In view of the facts and circumstances, the application is allowed in the manner that the order of disciplinary authority is not interfered with but it is left to the appellate authority to consider the same particularly in the light of the averments made in the O.A./Rejoinder and arguments advanced that there was no identification held of the applicant at P.S. Kashmeregate or elsewhere by the victim Kusum and Raj Kumar to co-relate the alleged misconduct of the applicant of enticing away both of them in the night of 13/14th Aug., 1989 from I.S.B.T. taking them to India gate leaving Raj Kumar in the way and going with the girl Kusum to the P.S. Chankayapuri, New Delhi where the staff of P.S. Chankayapuri apprehended the girl and the applicant is alleged to have escaped. All these facts need to be looked into from the D.D. of 13/14th August, 1989 and of 16/8/1989 of P.S. Chankayapuri, Kashmere Gate, I.S.B.T. as well as of P.S. Chankayapuri. We are not

le

6

expressing any opinion on the merit of the misconduct alleged. The appellate authority should pass a speaking order after hearing the applicant, if so desired, following the rules and regulations and thereafter pass an order on the basis of available evidence and record. The above exercise will be done within a period of six months from the date of receipt of this order. Applicant shall be free to assail the order, if aggrieved, according to law. The application is disposed of accordingly leaving the parties to bear their own costs.


(B.K. SINGH)
Member (A)


(J.P. SHARMA)
Member (J)

/nka/