

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1617/91
F.A. No.

199

DATE OF DECISION 20/12/95


<u>Shiv. Raj Singh</u>	Petitioner
<u>Sh. Shanker Raju</u>	Advocate for the Petitioner(s)
<u>Versus</u>	
<u>Lt. Governor of Delhi & Ors.</u>	Respondent
<u>Sh. Girish Kathpalia</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S. R. Adige, Member (A)

The Hon'ble Mr. Dr. A. Vedavalli, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? No.
2. To be referred to the Reporter or not? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement? No.
4. Whether it needs to be circulated to other Benches of the Tribunal? No.


(Dr. A. Vedavalli)
Member (J).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.
QA.No.1617/91

Dated this the 20th Day of December, 1995.

Hon'ble Shri S.R. Adige, Member(A)
Hon'ble Dr. A.Vedavalli, Member(J)

Shri Shiv Raj Singh
S/o Late Shri J.S. Yadav,
R/o 168, Police Colony,
Ashok Vihar,
Delhi 110 052.
Posted as: Assistant Sub-Inspector,
IIIrd Bn. D.A.P. New Police Lines,
Kingsway Camp, Delhi 110 009.Applicant

(By Advocate: Shri Shanker Raju)

VERSUS


1. Lt. Governor of Delhi,
Raj Niwas, Civil Lines,
Delhi 110 054.
2. The Commissioner of Police,
Delhi Police, Police Head Quarters,
I.P. Estate, New Delhi.
3. The Additional Commissioner of Police (AP),
Delhi Police, Police Head Quarters,
I.P. Estate, New Delhi.
4. The Deputy Commissioner of Police,
III Bn., D.A.P., Kingsway Camp,
Delhi 110 009.
5. Shri Jai Chand, Assistant Commissioner
of Police, III Bn., D.A.P. Kingsway
Camp, Delhi 110 009.Respondents

(By Advocate: Shri Girish Kathpalia)

JUDGMENT

(By Dr. A. Vedavalli)

The applicant Shri Shiv Raj Singh, an Assistant Sub-Inspector in the Delhi Police is aggrieved by the order of punishment of forfeiture of two years approved service temporarily for a period of two years entailing proportionate reduction in pay dated 8.8.90 imposed by the Deputy Commissioner of Police, Delhi (Annexure P-VIII).



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2. Against the aforesaid order of punishment, the applicant filed an appeal to the Additional Commissioner of Police, which was rejected by an order dated 1.4.91 (Annexure PIX).

3. The applicant has impugned the following orders in this application:-

- (a) Orders dated 22.9.1989 passed by Shri Mahesh Bhatt, D.C.P. III Bn., D.A.P. Delhi ordering departmental enquiry against the applicant (Annexure P-I);
- (b) Orders dated nil of Shri Jai Chand, A.C.P. III Bn., D.A.P. proposing to hold D.E. together with summary of allegations (being annexure P-II);
- (c) Charge served by the Enquiry Officer Jai Chand, A.C.P. III Bn. D.A.P. (Annexure P-VI);
- (d) Show-cause notice dated 24.5.1990 issued by Shri Dinesh Bhatt, D.C.P. III Bn., D.A.P. proposing to inflict punishment together with the findings dated 5.4.90 of E.O. Shri Jai Chand, A.C.P. III Bn., D.A.P. (Annexure P-VII);
- (e) Order of punishment dated 8.8.90 passed by Shri Dinesh Bhatt, D.C.P. III Bn., D.A.P. whereby he ordered forfeiture of 2 years' approved service of the petitioner besides treating the period of suspension as not spent on duty (Annexure P-VIII);
- (f) Order dated 1.4.1991 passed by Shri Gurcharan Singh, Additional Commissioner of Police (Armed Police) whereby he rejected the appeal dated 18.9.90 preferred before him by the petitioner (Annexure P-IX).

4. The charge framed against the applicant (vide Annexure P-VI) is as under:-

"I, Jai chand, ACP/III Bn.DAP, Delhi charge you ASI Shiv Raj Singh, No.2618/Sec. under section 21 of Delhi Police Act, 1978 for your grave misconduct & dereliction in performance of official duty in that while you were detailed as I/C guard stationed at LNJP Hospital for the supervision of the guards and also the prisoner undertrials admitted in

the Hospital during the period from 29.6.89 to 29.8.89. One prisoner undertrial W.Z. Hassan had visited number of times Army Hospital & Canteen in the uniform of the rank of Colonel/Brigadier but being supervisory officer, you did not object to his wearing of uniform which remained hung in his room at LNJP Hospital. You had also allowed various unauthorised facilities to the prisoner/undertrial in the Hospital such as T.V./V.C.R. and allowed private nurse in his room against the provision of rules. You also did not bring these facts to the notice of senior officers.

(JAI CHAND) ACP,
ENQUIRY OFFICER,
III BN:DAP:DELHI."

5. The major grounds on which the aforesaid orders are challenged, briefly stated, are:-

(1) The impugned orders have been passed mechanically, arbitrarily, illegally and perversely; the enquiry was not conducted in accordance with the relevant rules and in particular rule 16 (i) of the Delhi Police (Punishment and Appeal) Rules, 1980 since relevant copies of the documents which were relied upon were not furnished to the applicant nor the list of documents was ever supplied with the summary of allegations even after the application in writing; rule 16 (x) of the said rules is also violated since the disciplinary authority has not given its own finding on each charge.

(2) The Enquiry Officer, the disciplinary authority and the Appellate Authority have not considered the records in the departmental enquiry and have gone beyond evidence and summary of allegations in coming to the


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conclusion and there is no evidence to substantiate the charge levelled against the applicant in terms of summary of allegations; duty of the applicant was not supervisory; duties of the inspecting Inspectors and the concerned ACP were also supervisory and the responsibilities if any will be theirs and not of the applicant; thus there is non-appreciation of the position by the authorities regarding the reference of the under-trial/prisoner by jail hospital to G.B. Pant Hospital as Col.Hassan; the applicant had no reason to suspect his identity; the statement of PWs 13,2 and 4 established that the applicant was not at fault and the personal items like VCR, TV and the Army dress were very much there in his room even at the time of inspection by the Inspector and the ACP who did not object to those things.

6. The applicant sought the following reliefs in this OA:-

- "(i) Accept the appeal of the applicant being appeal dated 18.9.1990 which was illegally rejected by the respondent No.3;
 - (ii) quash the annexures P-I, P-II, P-VI, P-VII (show-cause notice dated 24.5.90), P-VIII (orders dated 8.8.90), P-IX (orders dated 1.4.91);
 - (iii) treat the applicant also on duty from/during the period in which he remained under suspension ie. from 6.9.89 to 17.5.90 for all purposes."
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7. The OA is contested by the respondents. They have filed their counter affidavit in reply. The allegations made by the applicant in his application have been denied by the respondents.

8. The applicant has not filed any rejoinder to the counter reply filed by the respondents.

9. We have heard the learned counsel for the parties. We have gone through the pleadings and other relevant documents placed on record. We have also perused the original records which have been made available for our perusal by the respondents.

Re ground No.1, the respondents have submitted, inter alia, that the applicant had been dealt with departmentally under Section 21 of the Delhi Police Act, 1978, as he failed to discharge his duties when he was posted as Guard of the under trial/prisoner Shri W.S. Hassan. The said person was admitted in the hospital as a Brigadier. The applicant allowed the said person to wear the uniform. An undertrial/prisoner cannot wear official uniform whether he is genuine or a cheat. The applicant also permitted that person to have V.C.R. and T.V. in his room without permission of the court as required under the rules. He also took the undertrial/prisoner unauthorisedly to various destinations and in unauthorised transport. This was proved during the departmental enquiry. He also allowed private nurses in the room of the said under trial/prisoner without permission. Further he did not also bring these facts

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to the notice of his superior officers. All these acts, according to the respondents, are against the rules. The applicant was, therefore, charged for grave misconduct and failure to discharge his duties as I/C Guard of the undertrial/prisoner Shri Hassan. It is submitted by the respondents however, that the enquiry was duly conducted by the Enquiry Officer as per the procedure laid down under Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980, and there is no violation of those rules. The allegation of the applicant regarding non-supply of copies of documents by the enquiry officer is also stated by the respondents to be false as the applicant himself received the same as per the Annexure-A to the counter affidavit.

10. Re ground No.1 we have considered rival contentions and submissions made by the parties carefully. Before a finding on the above ground can be given it would be necessary to examine the matter in the light of legal position as noted below.

11. The scope and extent of the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment is well settled by the Supreme Court in a catena of decisions. In the case of Union of India versus Parma Nanda (AIR 1989 (SC) 1185), it has been held inter alia that:

"27. We must unequivocally state that 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

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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 Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide 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 even if some of it is found to be irrelevant or extraneous to the matter."

12. While so, the applicant in the present case, has not filed any rejoinder refuting the contents of the counter affidavit filed in reply to the OA.

13. During the arguments before us, the learned counsel for the applicant cited a decision of the Supreme Court in Committee of Management, Kisan Degree College Versus Shambu Saran Pandey and others (JT 1995 (1) SC 270), wherein, it was held inter alia that if the department seeks to rely on any documents in proof of the charge, copies of those documents shall be supplied to the delinquent as per the requirements of the principles of natural justice. If those documents are voluminous and cannot be supplied, the delinquent is to be given an opportunity to inspect the documents and obtain appropriate extract at his own expense. However, on consideration, we are of the view that the said decision would not be applicable to the facts of the present case since it is seen from the original records made available by the respondents, though

Annexure A-2 to counter reply was not filed, that the applicant has in fact received the summary of allegations alongwith the list of witnesses and documents relied upon by the respondents in proof of the charge on 9.10.89 and has signed the receipt in token of the same.

14. In view of the above we find that the applicant has not been able to substantiate the above ground with any solid material or proof and hence the same is without any merit and untenable in the eye of law.

15. Re ground No.2, the respondents have stated that the enquiry officer, submitted the findings on the basis of the statements given by the PWs and DWs and recorded during the departmental enquiry. The respondents have further submitted that the disciplinary authority considered all the facts and circumstances of the evidence on record and passed a speaking order imposing the punishment of forfeiture of two years approved service. On appeal, this was reduced to one year's forfeiture of service, temporarily for a period of one year. The punishment is in fact light and is not disproportionate.

16. We have considered this ground also indepth. The plea taken by the applicant that the Army uniform was already hung in the room of the undertrial/prisoner in the hospital does not absolve him from the duty to ensure that it is not worn by an undertrial/prisoner irrespective of the fact whether

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the person concerned is genuine or a cheat. He has not denied the submissions of the respondents that the wearing of official uniform by an undertrial/prisoner is against the rules. Similarly, he has not denied the other charges relating to the allowing of facilities like TV/VCR and provision of private nurses to the prisoner/undertrial in the hospital without obtaining permission from the Guard as per the rules, as stated by the respondents. Moreover he has also not been able to show any proof or evidence that such wearing of the uniform, allowing of the facilities etc, for that undertrial/prisoner has been reported to his superior officers. Further, the fact that there may be other officers along with him who are on duty, in our view, would not exonerate him from his own liability. We therefore find that this ground is also devoid of any merit.

17. In view of the aforesaid facts of the case and in the light of the settled legal position as noted supra, we are of the opinion, in the facts and circumstances of the case that the applicant has not been able to establish any valid and tenable grounds warranting interference by this Tribunal.

18. The OA is devoid of any merit and is, therefore, dismissed.

19. The applicant however, filed an MP.3607/91 seeking ad-interim relief regarding his promotion as Sub-Inspector (Executive) from 14.10.1991 by bringing his name inbetween the names of Siri Prakash and

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Ramesh Chand at Sl.Nos.22 and 23 respectively (Annexure P.II) and to direct the respondents to allow his earned increments which became due on 1.9.90 and 1.9.91 together with arrears.

20. The respondents have filed their reply to the said M.P. opposing it on the grounds inter alia that the ad interim relief claimed goes beyond the original application itself and the grant of such relief would be tantamount not only allowing the original application at this stage but also granting the petitioner such a relief which he has not prayed in his original application. They have also submitted that the prayer in the MP is a distinct cause of action, if any, and cannot be considered at all in this matter.

21. It is noticed from the record that vide order sheet dated 10.2.92, the learned counsel for the applicant has stated that he did not wish to file any rejoinder to the M.P.

22. Re. the MP.3607/91, we are of the opinion on a careful consideration of the matter that the same is beyond the purview of the present OA and as such, is not maintainable. The MP is, therefore, dismissed on that ground. No costs.

H VedaValli
20-12-95
(DR. A. VEDAVALLI)
MEMBER(J)

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

/SSS/