

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1788/1991

New Delhi, this 31 day of August, 1995

Hon'ble Shri A.V. Haridasan, Vice-Chamain(J)
Hon'ble Shri R.K. Ahooja, Member(A)

Shri Jai Singh (364/P)
s/o Chaudhary Sarup Singh
Village & PO Ladpur
Dt. Rohtak, Haryana .. Applicant

By Shri Shyam Babu, Advocate

versus

1. Delhi Administration, Delhi
through
its Chief Secretary
5, Sham Nath Marg, Delhi
2. Commissioner of Police
Police Hqrs., Delhi
3. Addl. Commissioner of Police
(Southern Range), Police Hqrs.
IP Estate, New Delhi .. Respondents

By Shri Arun Bhardwaj, Advocate

ORDER

Hon'ble Shri R.K. Ahooja, Member(A)

The applicant, Jai Singh was posted as an Assistant Sub-Inspector in Police Post, Tilak Vihar under the jurisdiction of Police Station, Tilak Nagar, West District of Delhi Police during January, 1988. On 28.1.1988 the applicant brought one person, Karam Chand who was caught by the public and was alleged to be a thief to the Police Post. Karam Chand was kept in the Police Post through out the day and according to the applicant, on finding that the suspect was totally innocent, was released with due information to his superior officers. However, the applicant was served with a memorandum of enquiry and summary of allegations in which it was alleged that though the afore mentioned Karam Chand was brought to the Police Post along with the stolen articles with the help of members of public,

applicant had allowed him to escape from custody. It was also alleged against the applicant that some of the stolen articles were returned to the complainants without completing legal formalities, ~~and~~ even though he had no authority to distribute stolen articles. The possibility of the thief being let off for ulterior reason was also mentioned. Similar action was also taken against Inspector Ved Parkash, SHO, Tilak Vihar and Sub-Inspector, Gurcharan Singh, Incharge, Police Post, Tilak Vihar as they were considered equally responsible since the alleged irregularities committed by the applicant were said to be well within their knowledge and also because they had failed to inform their superior officers regarding the escape of the alleged thief from the custody of the applicant. The summary of allegations was served on the applicant along with Inspector Ved Parkash and Inspector Gurcharan Singh vide office order dated 16.8.1988. After the Enquiry Officer, Shri M.S.Sandhu found the charges levelled against the applicant and the other two officials as proved beyond doubt, The applicant was ultimately vide the impugned order dated 16.2.1990 reduced to the rank of Head Constable for a period of five years. The other charged officers Sub-Inspector Gurcharan Singh, Incharge, Police Post, and Ved Parkash, SHO were given the punishment of reduction in their respective pay to the minimum of the scale in their existing ranks, even though, in the show-cause notice, the proposed punishment in case of the Inspector Ved Parkash was reduction in rank from Inspector to Sub-Inspector. The applicant thereafter preferred an appeal against the impugned order before Respondent No.2, Commissioner of

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Police, but the same was rejected by an order dated 13.3.1991. The applicant has now come to the Tribunal aggrieved by the enquiry report dated 25.5.1989, the impugned order of 16.2.1990 and the appellate order dated 13.3.1991.

2. Briefly, the grounds on which the afore mentioned report and orders are assailed are firstly that the enquiry was not conducted properly inasmuch as the Enquiry Officer had extensively cross-examined not only the prosecution witnesses but also the defence witnesses, which vitiated the enquiry report. Secondly the Enquiry Officer had wrongly relied upon the statement of Constable Virender Singh, PW1 recorded during the course of preliminary enquiry which was not admissible under the Delhi Police (Punishment & Appeal) Rules, 1980. Similarly PW8 was allowed to rely upon the statement of Srmt. Somvati recorded during the preliminary enquiry. Thirdly, the applicant also claims that the impugned order is also hit by Article 14 and 16 of the Constitution since he was treated unequally and discriminately in the matter of punishment as compared to the other two charged officers who were only given reduction in pay as against his reduction in rank even though the Enquiry Officer had also found them equally guilty. The applicant has claimed that there was no appropriate ground for the charge nor there was any proper appreciation of the evidence produced during the course of enquiry, since none of the prosecution witnesses had said anything regarding the escape of the thief from the Police Post or regarding the recovery of the stolen property from him; on the contrary PW2

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Satwant Kaur and PW3 Darshan Singh had admitted that no articles of theirs was stolen nor did they bring anything from the Police Post nor did they see the thief. The Enquiry Officer also did not take into account the evidence given by the defence Witnesses which went to show that the suspect was not a thief at all or that he had managed to escape from custody. The applicant asserts that there was no ground for the Enquiry Officer to find that the suspect slipped away from the Police Post or that the applicant with the intention to cover this lapse had with the tacit approval of the other two charged officers, recorded DD No.30 mentioning therein that the thief had been released after due interrogation and nothing was found against him, on verification.

3. In their reply, the respondents have stated that the joint departmental enquiry was conducted against the three officials after taking the approval of the competent authority under Rule 15(2) Delhi Police (Punishment and Appeal) Rules, 1980. The applicant along with the other two charged officers was also given an opportunity to be heard in person after the show-cause notices were issued and no point was raised except saying that he may be excused. In fact, the charged officers had leveled allegations against each other saying that the incident and the facts of the case were brought to the notice of the senior officers. A more severe punishment was given to the applicant as he was the main culprit having allowed the suspect thief to escape from his custody. The respondents have also denied that the enquiry proceedings were not conducted

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properly and that the evidence of the prosecution and defence witnesses was not properly appreciated by the Enquiry Officer before coming to a final conclusion. It has been pointed out that the Enquiry Officer has the authority to cross-examine the PWs under Rule 16(5) of Delhi Police (Punishment & Appeal) Rules, 1980. The statement of PW1 Constable Vijinder Singh, was recorded in the presence of all the three defaulters and the applicant was given full opportunity to cross examine the witness. The copies of the relevant documents were also supplied to the applicant. Since the charge against the applicant was proved beyond doubt, the punishment it is stated was fully justified.

4. We have carefully considered the pleadings of both the parties as well as examined the file regarding the departmental enquiry. We have also heard both the counsels at considerable length.

5. Shri Shyam Babu, learned counsel for the applicant has stressed that the impugned order was liable to be set-aside since the provisions of Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 have been clearly violated and the failure to comply with the requirement of this rule have been held by this Tribunal to vitiate the legitimacy of the enquiry. Rule 15(3) provides that the file of preliminary enquiry will not form part of the formal department records but statements of the witnesses in preliminary enquiry may be brought on record of the departmental proceedings when these witnesses are no longer available. In other words, a statement made in the preliminary enquiry can

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