

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1809/91

DATE OF DECISION 22.7.93

Sh. Mange Ram Applicant

V/s

U.O.I. & Ors. . . . Respondents
Three Commissioner of Police,
Delhi.

FOR THE APPLICANT Sh. M.K. Gupta, counsel

FOR THE RESPONDENTS Sh. Mukul Dhawan, counsel

CORAM .

Hon'ble Sh. I.K. Rasgotra, Member (A)
Hon'ble Sh. B.S. Hegde, Member (J)

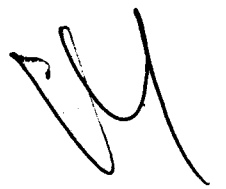
JUDGEMENT (ORAL)

(delivered by Sh. I.K. Rasgotra, M(A))

Petitioner in this case was charge
sheeted on 10-9-90. An enquiry was held and the enquiry
report was submitted to the disciplinary authority
on 20.11.91. Simultaneously a copy of the same was
furnished to the charged official. Enquiry Officer
gave the finding that the charged officer had not
applied his mind while making the arrest of Sh.
Vinod Kumar in view of the fact that the said
person was not present at the time when incident
took place. Enquiry Officer further observed that
it was clear from the facts and circumstances of the
case that the tenant Vinod Kumar and his wife were
harrassed by the landlord Shri Phool Kumar, his wife,
and their son Sh. Rakesh Kumar who tried to forcibly

evict the tenant Vinod Kumar from the rented premises. " The ASI instead of taking action against the offenders booked ~~Shri~~ Shri Vinod Kumar alongwith Rakesh Kumar. Hence the first part of the charge that he falsely implicated and arrested Vinod Kumar under Section 107/151 Cr.P.C. is hereby proved. However, the second part of the charge which relates to beating of the complainant and her husband by the Charge Officer does not stand proved for want of concrete evidence".

2. Shri M.K.Gupta, learned counsel for the petitioner submitted the incident had taken place on 19.2.90 at about 8.00AM to 8.30AM. Shri Rakesh Kumar son of landlord Sh.Phool Kumar and his wife had asked the wife of the tenant Vinod Kumar to vacate the house. They abused her and gave her a beating and threw out their house-hold goods. They further told her to vacate the house at the same moment. Admittedly Vinod Kumar husband of Asha Devi, was not present on the spot when incident took place. He came at about 2.30PM/3.00PM when he was told about the incident. He went to Police Station. The learned counsel for the petitioner referred us to the evidence of Shri Jai Singh, DW I according to



which a quarrel took place between Vinod Kumar and Rakesh Kumar at the Police Station when Vinod Kumar also allegedly slapped Rakesh Kumar. In these circumstances the petitioner had no alternative but to arrest both of them under Section 107/151 Cr.P.C. Both were produced before the Special Executive Magistrate on 20-2-93. The Special Executive Magistrate sent both to Judicial Custody. They were bailed out on 22.2.90.

Learned counsel further submitted that if ^{any} there was/malafide intention on the part of the petitioner, the Special Executive Magistrate would have made some comments about the illegality of the arrest. Instead the Special Executive Magistrate sent them to judicial custody. This is indicative of the fact that the action taken by the petitioner was not illegal and was bonafide.

We have perused ^{the}/records and considered the submissions made by ld.counsel for both the parties. In our opinion, the enquiry officer came to the right conclusion that Sh.Mange Ram had not applied his mind while making arrest of the complainant husband. It is not ⁱⁿ/dispute that



Shri Vinod Kumar was not present at the spot when the incident took place. Sh. Vinod Kumar and Rakesh Kumar both were arrested under Section 107/151 Cr.P.C. A perusal of the said sections of the Criminal Procedure Code shows that the application of the said sections was not justifiable in the circumstances^{as} has come on record. It is no body's case that Vinod Kumar was present at the spot when his household goods were thrown out from the rented accommodation and his wife was allegedly beaten. The Enquiry Officer has thus rightly come to the conclusion that the arrest under Section 107 /151 Cr.P.C. was not justified. The charged officer was given an opportunity to submit a representation to the disciplinary authority before it decides to interfere/penalty. After considering the representation, the disciplinary authority passed the order dated 17.1.91 imposing the following penalty:-

" Accordingly, I hereby order that the entire approved service as ASI of Sh. Mange Ram 2565/NW is forfeited permanently and his pay is reduced to the initial stage i.e. Rs 1320 P.M. in the time scale of pay for a period of three years. He will not earn increment of pay during the period of reduction and on the expiry of this period the reduction will have the effect of postponing his future increments of pay".

The petitioner filed an appeal before the Additional Commissioner of Police (N.R.) Delhi. The appeal was rejected vide order dated 18.4.91. Ld. counsel for

petitioner submitted that penalty imposed on the petitioner is tantamount to imposition of multiple penalties on the petitioner. Referring to 21 section of the Delhi Police Act, the learned counsel submitted that only one of the penalties enumerated in section 21 can be imposed. The penalties provided in the said section are:-

1. dismissal
2. removal from service
3. retention in rank
4. forfeiture of approved service
5. reduction the pay.
6. withholding of increment and
7. fine not exceeding one month's pay

/ on the petitioner The punishment inflicted/is not one of the
on the other hand punishments given above but are:-

(a) forfeiture of applicant service rendered as ASI.

(b) reduction to the minimum of the scale of pay at Rs 1320/- for 3 years

(c) stoppage of increment for 3 years with postponement of future increments.

The penalty imposed amounts to double jeopardy and deserves to be set aside being in violation of statutory provisions.

We have heard the learned counsel for both the parties and perused the record carefully. It is well settled that Tribunal cannot enter into re-appraisal of the evidence unless the findings are perverse and in violation of principles of natural justice. We are not persuaded to accept that the

enquiry is vitiated in any manner and that the findings of the enquiry officer are perverse .

We, however, observe that the penalty imposed on the petitioner is not in accordance with rule 8(d) of Delhi Police (Punishment and Appeal) Rules, 1980. The said rule reads as under:-

" 8(d) Forfeiture of approved service - Approved service forfeited permanently or temporarily for a specified period as under:-

- (i) For purposes of promotion or seniority (permanent only)
- (ii) Entailing reduction in pay or deferment of an increment or increments (Permanently or temporarily)"

The order inflicting punishment in the petitioner clearly contemplates to forfeit entire service rendered as ASI permanently reducing his pay to Rs 1320/-p.m. in the time scale for 3 years. The disciplinary authority has further ordered deferment of increment of pay during the period of reduction having the effect of postponing future increments on the expiry of reduction period.

In our opinion the penalty imposed is not in conformity with the provisions made in Rule 8(d) of the Delhi Police (Punishment and Appeal) Rules, 1980.

In the above facts and circumstances of the case the penalty imposed vide order dated 17.1.91 and as confirmed by the Appellate order dated 18.4.1991 is hereby set


d


aside and quashed. We further direct the respondents to cause the disciplinary authority to reconsider the case of the petitioner and pass appropriate order during providing him an opportunity to file an appeal before the appellate authority against the order of disciplinary authority if required.

The respondents are further directed to take further action in the light of above direction with utmost expedition and preferably within a period of three months from the date of receipt of a copy of this order. We reserve the liberty for the petitioner to approach the Tribunal, if aggrieved by the final order passed as above, in accordance with law if so advised.

O.A. is disposed of with the above directions.

No costs.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

sk