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31. 1. 1996

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

P R E S E N T

The Hon'ble Shri K. Muthukumar, Administrative Member
and
The Hon'ble Shri P. Suryaprakasam, Judicial Member

O.A. No.1831 of 1991

ASI Laxmi Narain .. Applicant

vs.

1. Delhi Administration through
Lt. Governor, Raj Nivas,
Rajpur Road,
Delhi.
 2. The Dy. Commissioner of Police,
South West District,
R.K. Puram,
New Delhi.
 3. Shri Bhagwant Singh, Inspector(E0)
D.E. Cell Vigilance,
P.S. Defence Colony,
New Delhi.
- .. Respondents

Shri S.S. Tiwari .. Counsel for Applicant

Shri Vijay Pandita .. Counsel for Respondents

O R D E R

(Pronounced by the Hon'ble Shri P. Suryaprakasam, Judicial Member)

The applicant preferred this application against the findings of the enquiry conducted against him as well as the show cause notice issued on the basis of the findings of the Enquiry Report.

2. The applicant's case is that he was enrolled

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as a Constable in Delhi Police on 7.4.1959. Subsequently he was promoted and posted ASI in R.K. Puram Police Station and in fact he has been discharging his duties for the past 32 years without any blemish. The applicant was proceeded under Section 21 of Delhi Police Act, 1978 for violation of rule 3(i)(iii) of C.C.S. (Conduct) Rules, 1964 for an incident said to have occurred on 12.6.1990. According to the applicant the summary of allegation which has been issued to him is as follows:-

"On 12.6.1990 at about 3 p.m. when Shri Vimal Kumar R/O House No.3558, Gali No.6, Jai Mata Market, Tri Nagar, Delhi was going to Section No.6, R.K.Puram from Moti Bagh on his Scooter DEH/7031 make Priya met with an accident with another Two Wheeler Scooter near Sangam Cinema and the Rider of the scooter sustained injury. ASI Laxmi Narain No.2044/SW reached at the spot and sent the injured person to hospital Safdar jang Hospital by Ambulance. The ASI brought Shri Vimal Kumar Jain to the Police Station along with his scooter. At Police Station R.K.Puram, the ASI took Rs.800 for the release of Shri Vimal Kumar Jain on Bail. The ASI also did not return Rs.53/- recovered from the personal search of Shri Vimal Kumar Jain. The ASI further took Rs.400 to release the scooter of Shri Vimal Kumar Jain on superdari. He also took Rs.100 on behalf of Malkhanawala.

The ASI demanded Rs.6000 to settle the matter at the police station which was not agreed by the complainant Shri Vimal Kumar Jain and thereafter the ASI demanded Rs.2000 to loose the case in favour of Shri Vimal Kumar Jain.

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The aforementioned acts on the part of the ASI tantamount gross misconduct rendering him unbecoming of a govt. servant in violation of rule 3(i)(iii) of C.C.S. (Conduct) Rules, 1964 for which he is liable to be dealt with departmentally u/s 21 of Delhi Police Act, 1978."

3. Later a departmental enquiry under Section 21 of the Delhi Police Act was conducted and the Enquiry Report also was submitted to the authorities who agreed with the findings of the Enquiry Officer and proposed provisionally to award a punishment of dismissal to the delinquent/applicant from service. In pursuance of the same the applicant was issued a show cause notice by the Deputy Commissioner of Police (South West) District (R.2) on 27.7.1991 against which the applicant preferred this O.A.

4. The respondents have filed a reply statement denying the allegations made by the applicant except with regard to facts. The respondents have submitted that the disciplinary enquiry conducted against him has been done according to rules and the finding also has been accepted by the disciplinary authority. Further more, at the stage of a show cause notice of the proposed punishment the applicant ought not to have filed an application since it is premature and

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as such is liable to be dismissed.

5. We have heard the arguments advanced by both the parties and have also gone through the materials placed before us. The main stress of the argument advanced on behalf of the applicant is that there is no evidence since the main two witnesses have not been examined and also there is a violation of principles of natural justice. The learned counsel for the respondents strenuously objected to this argument and stated that the Tribunal should not interfere with the show cause notice which has been issued to the applicant since it is premature.

6. After hearing the arguments of the parties we have to agree with the counsel for the respondents that we cannot interfere at this stage since what has been challenged is only a show cause notice of the proposed punishment. The apex Court has already described the jurisdiction of this Tribunal in so many cases of which the latest is Madhuri Patel vs. Additional Commissioner (1994 SCC (L&S) 1349) wherein it has held as follows:-

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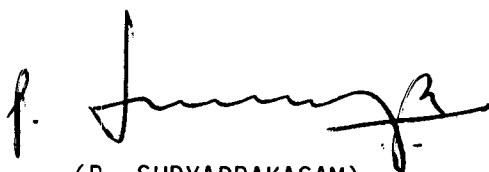
"The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the find."

The Hon'ble Supreme Court has also held the same view in another case viz. Director of Tribal Welfare, Govt. of A.P. vs. Naviti Giri (JT.1995 3 SC 684). Therefore, our area of operation is very very limited and we do not want to go into the merits of the case at this stage in view of the fact that the show cause notice of the proposed punishment cannot be quashed by us and secondly even if the punishment has been imposed under the rules an appeal has been provided for under which the applicant can pursue the remedy. Only after exhausting all the remedies if he is still aggrieved he may come to the Tribunal. The applicant cannot approach the Tribunal at the show cause notice stage itself.

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7. In view of the foregoing, we dismiss the application without any order as to costs.


(P. SURYAPRAKASAM)
MEMBER(J)


(K. MUTHUKUMAR)
MEMBER(A)

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