

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI

O.A.No.1903/91

Date of decision: 22.04.1992

Sukhbir Singh

...Applicant

Shri Shyam Babu

...Counsel for the applicant.

Versus

Delhi Administration & Others

...Respondents

Ms. Kum Kum Jain

...Counsel for the Respondents

CORAM:

THE HON'BLE MR. P.K.KARTHA, VICE CHAIRMAN  
THE HON'BLE MR. A.B.GORTHI, MEMBER(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

J U D G M E N T

(Delivered by Hon'ble Mr. A.B.Gorthi, Member(A) )

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In this application under Section 19 of the Administrative Tribunals Act, 1985, Sub Inspector, Sukhbir Singh has challenged the validity of the order suspending him from duty w.e.f. 15.3.1990 and the penalty of withholding two future increments with cumulative effect imposed upon him after a departmental enquiry. His prayer is that the punishment awarded to him be set aside and the period of his suspension be treated as on duty with all consequential benefits and reliefs.

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2. During March, 1990, the applicant was posted as a Sub Inspector at Police Station, Kotla Mubarakpur, New Delhi. On receipt of a D.D. on 9-3-90, the applicant was deputed for investigation of an incident. It pertained to a complaint from Mehra sons that their signboard was broken by the workers of Mamta Garments. The applicant, after reaching the spot and conducting investigation, reported, inter alia, that it was not found that any board was broken and that no offence was made out. The accusation against the applicant was that he manipulated the facts in his report and that he did so mala fide. He was suspended from duty on 15-3-90. Later, he was served with a charge memo and after a departmental enquiry was awarded the penalty of withholding of two future increments for a period of two years with cumulative effect.

3. We have heard the learned counsel for both parties and examined the documents carefully.

4. At the very outset, Shri Shyam Babu, the learned counsel for the applicant contended that the suspension of the applicant and the subsequent penalty imposed upon him would amount to double jeopardy, particularly because the period of suspension was

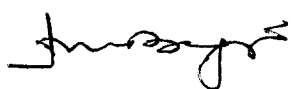
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intended to be treated as "not spent on duty". There is no doubt that an order of suspension carries with it certain evil consequences. Nevertheless, in view of rule 7 of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter called as the Rules), which spells out specifically that suspension pending an enquiry is an infliction which does not amount to punishment, the plea of double jeopardy cannot be accepted.

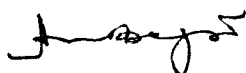
5. It was urged by the applicant's counsel that the charge was vague and hence bad in law. The applicant was charged with manipulating the "actual facts", without stating what the actual facts were. A plea of this nature will carry some weight only if it is shown that the delinquent employee is prejudiced in his defence by the vagueness in the charge. In the instant case, the charge read with the summary of allegations and other material furnished to the applicant sufficiently disclosed the nature of the accusation which <sup>he</sup> ~~the applicant~~ was required to answer. The applicant cannot, therefore, be said to have been prejudiced in his defence even if we take the view that the charge could have perhaps been better articulated.

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6. The learned counsel for the applicant took us through the entire enquiry proceedings and vehemently contended that this was a case of no evidence. In doing so, he placed heavy reliance on the evidence of the defence witnesses. It will not be necessary for us to dwell at length on this issue. A perusal of the evidence of the prosecution witnesses, particularly Shri Sushil Kumar Bedi, S.H.O., would clearly show that the applicant had entered a report which was not factually correct. There was, however, no evidence whatsoever to indicate that the applicant had acted mala fide. Accordingly, that portion of the charge relating to his mala fides was held not proved as per the Enquiry Officer's findings with which the disciplinary authority also agreed. In fact, this itself was made an issue by the learned counsel for the applicant who argued that the applicant was charged for something but was found guilty of something else. Such an argument is clearly misplaced. Clause ix of rule 16 of the Rules clearly provides that if the enquiry establishes a charge different from the one originally framed, a finding may be recorded accordingly provided that the accused officer had an opportunity of defending himself against it. In view of this, the finding by the Enquiry Officer that the applicant had

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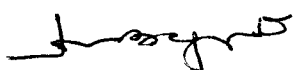


manipulated the facts in his report but that he did so without any mala fides, is legally in order. 4

7. Shri Shyam Babu drew our attention to clause (xii)(c) of rule 16 of the Rules which provides that a show cause shall be given to the accused officer stating the proposed punishment and/calling upon him to submit an explanation within 15 days against the proposed punishment. In the instant case, admittedly, no such show cause notice was served upon the applicant before the imposition of the penalty. The contention of the learned counsel for the applicant that the penalty is thus rendered illegal cannot be accepted in view of the decision of the Supreme Court in UNION OF INDIA V. TULSIRAM PATEL, (1985) 3 SCC p.398. Relevant portion from the judgment is reproduced below :

"...The opening words of Article 309 make that article expressly "Subject to the provisions of this Constitution". Rules made under the proviso to Article 309 or under Acts referable to that article must, therefore, be made subject to the provisions of the Constitution if they are to be valid. Article 310(1) which embodies the pleasure doctrine is a provision contained in the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to that article are subject to Article 310(1). By the opening words of Article 310(1) the pleasure doctrine contained therein operates "Except as expressly provided by this Constitution". Article 311 is an express provision of the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to Article 309 would be subject both to Article 310(1) & 311. This position

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was pointed out by Subba Rao, J., as he then was, in his separate but concurring judgment in Moti Ram Deka case at page 734, namely, that rules under Article 309 are subject to the pleasure doctrine and the pleasure doctrine is itself subject to the two limitations imposed thereon by Article 311. Thus, as pointed out in that case, any rule which contravenes clause (1) or clause (2) of Article 311 would be invalid. Where, however, the second proviso applies, the only restriction upon the exercise of the pleasure of the President or the Governor of a State is the one contained in clause (1) of Article 311. For an Act or a rule to provide that in a case where the second proviso applies any of the safeguards excluded by that proviso will be available to a government servant would amount to such Act or rule impinging upon the pleasure of the President or Governor, as the case may be, and would be void as being unconstitutional. "

8. <sup>the above said observations in</sup> Although Tulsiram Patel's case pertained to the second proviso to Article 311(2), the same equally holds good even in the case of the first proviso to the said Article. Accordingly, non-compliance with rule 16(xii)(c) does not affect the validity of the punishment awarded to the applicant. 2

9. Lastly, the learned counsel for the applicant contended that the order of suspension passed against the applicant was not only unjustified but is illegal. He drew our attention to rule 27, clause (a) and (b) which read as under :

"27. Suspension in departmental cases. A Police Officer whose conduct is under departmental enquiry shall ordinarily be placed under suspension only:

(a) When it appears likely that the charge framed will, if proved, render him liable to dismissal or removal from service, or

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- (b) When the nature of accusation against him is such that his remaining on duty is prejudicial to the public interest or detrimental to investigation into the accusations. A report of all suspensions and re-instatements shall be submitted to the Additional Commissioner of Police or other concerned. "

10. The applicant was placed <sup>under</sup> suspension on 15-3-90 whereas the charge was framed and served upon the applicant on 9-11-90. Moreover, the charged <sup>s</sup> could not have been viewed as grave enough to warrant the penalty of either dismissal or removal. The suspension of the applicant, it was contended, was, therefore, violative of clause (a) ~~and~~ of rule 27. Further, the prosecution witnesses were ~~also~~ experienced and senior police officials who could not have been influenced by the applicant. There was no scope for the applicant to interfere with the investigation even if he had remained on duty. Under these circumstances, we find that there is merit in the contention of the learned counsel for the applicant that there was no justification in keeping the applicant under suspension and to treat the period of his suspension as not on duty, as was being proposed by the respondents. Although there is no illegality as such in the order of suspension, we do not find any justification for the respondents to treat the same as not on duty.




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11. In the result, we find that the penalty imposed on the applicant does not suffer from any illegality. The applicant's prayer for setting aside the punishment is, therefore, rejected. However, keeping in view the totality of the circumstances of the case, we are of the considered view that the ends of justice would be adequately met if we direct the respondents to treat the period of suspension of the applicant as on duty for all purposes. We order accordingly with a further direction that the applicant shall be entitled to all consequential benefits, monetary or otherwise.

12. The application is partly allowed in the above terms. We pass no order as to costs.

  
(A.B. GORTHI)  
MEMBER (A)

pkk.

  
(P.K. KARTHA)  
VICE CHAIRMAN

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