

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

(5)

D.A. 2548/91

This the 4th July, 1996.

HON'BLE SHRI S.R. ADIGE, MEMBER (A)
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J).

Gajraj Singh,
EX SI
R/o Vill. Gopal Pur,
P.O. Burari P.S. Timarpur
Wazirabad
Delhi-110009. Applicant
(By Advocate Shri M.M. Sudan)

Versus.

1. Delhi Administration,
Through Chief Secretary,
5-Sham Nath Marg
Delhi.
2. Commissioner of Police,
Police Head Quarter,
New Delhi.
3. Additional Commissioner of Police,
New Delhi Range,
Police Head Quarter,
New Delhi.
4. Deputy Commissioner of Police,
East District,
Delhi Police, Delhi. Respondents.
(By Advocate Sh. Rajinder Pandita)

ORDER

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

1. In this application EX S.I. Gajraj Singh has impugned the enquiry report dated 12.11.90 (Ann. A-4) as well as the dismissal order dated 26.4.91 (Ann. A-6) and the appellate order dated

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12.9.91 (Ann.A-8) rejecting his appeal. The applicant has also sought a declaration that Rule 15(2) Delhi Police (P&A)Rules is illegal and violative of the Constitution.

2. Shortly stated, the applicant who joined service as a Constable on 4.9.72 and in due course was appointed as Sub-Inspector of Police on 17.6.86, was proceeded against departmentally on the charge that while posted at PS Gandhinagar he was given DD No.19-A dated 27.8.89 PS Gandhinagar for necessary action that one Meena Devi W/o Shri Ram Khilari R/o. 2130 Gali No.7 Kailash Nagar, Delhi was missing. Later on he was entrusted with the Investigation of Case FIR No. 252 dated 20.9.89 under 365 IPC PS Gandhi Nagar Delhi regarding alleged abduction of Smt. Meena Devi. Shri Ram Khilari suspected the involvement of one Ram Gopal S/o Rewati Prasad R/o H.No. A-64 Shalimar Bagh Delhi in the abduction of his wife. The applicant called Ram Gopal in the evening of 20.9.89 and detained him there illegally. The applicant released Ram Gopal on 21.9.89 after accepting Rs.1500/- from his brother Radhey Lal as illegal gratification and he kept Ram Gopal under constant fear of arrest

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and demanded Rs.2000/- for his release.

3. The Asstt. Commissioner of Police DE Cell Vigilance Delhi, who was the Enquiry Officer in his report dated 12.11.90 held that the charge against the applicant stood proved beyond all doubt. Enclosing a copy of these findings, a show cause notice was issued to the applicant as to why he should not be dismissed from service. On receipt of the applicants show cause ^{reply to the} ~~reply~~, the same was considered by the Disciplinary Authority who by impugned order dated 26.4.91 imposed the penalty of dismissal upon the applicant which was upheld in appeal vide impugned order dated 12.9.91 against which this DA has been filed.

4. We have heard applicants counsel Shri Sudan and respondents counsel Shri Pandita. We have also perused the materials on record including the DE file which had been called for by us.

5. The first set of grounds are that as the complaint disclosed a cognizable offence, a criminal case should have been instituted against the applicant to give him the benefit

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of a fair trial. In this very connection it has been asserted that the prior permission of the Addl. Commissioner of Police was not obtained under Rule 15(2) Delhi Police (P&A) Rules and even if it was taken, the said Rule 15(2) gives unrestricted powers to the Additional Commissioner of Police to decide under what circumstances a criminal case is to be registered, or a departmental enquiry held which in the absence of proper guidelines is arbitrary and hence violative of the constitution.

6. In this connection respondents through additional affidavit dated 3.6.96 have filed a copy of letter dated 30.1.90 communicating approval of Addl. Commissioner of Police under Rule 15(2) Delhi Police (P&A) Rules for conducting the DE against the applicant. Furthermore, the respondents have pointed out that the Rules empower the Addl. Commissioner of Police to decide on the basis of the circumstances of the case as to whether a criminal case should be registered or a DE should be held. In the instant case it was found that there was not sufficient material for prosecuting the applicant in a Court of law but there was

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sufficient materials to deal with him departmentally and hence no criminal case was registered, but a DE was initiated instead. We are of the view that Rule 15(2) is self contained and requires no further guidelines in elaboration. When in the circumstances of the case upon inquiry the Addl. Comm. of Police concludes that there are not sufficient materials for securing a conviction, this Rule 15(2) permits him to order a DE instead where the quality of evidence is less stringent and the preponderance of probability is sufficient to bring home the guilt of the delinquent. It must also be remembered, that even if a criminal case had been instituted against the applicant and he had been acquitted therein, the respondents were not precluded from proceeding against the applicant departmentally provided any of the conditions available in Rule 12 Delhi Police (P&A) Rules were satisfied. Furthermore, the fact that the CCS(CCA) Rules and Government of India instructions do not contain any corresponding provision does not automatically imply that this provision per se is bad in law. This argument therefore fails.

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7. The next ground taken is that in violation of Rule 15(3) Delhi Police (P&A) Rules previous statements made by witnesses during the PE were brought on record in the DE. In this connection applicant's counsel Shri Sudan has placed reliance of the CAT P.B. judgement in OA No.968/91 Khairati Lal Vs. Commissioner of Police Delhi & Ors. 1996(1)CAT SLJ 562. The purpose of this sub rule is that evidence collected in the absence of the delinquent should not be used against him, unless it is unavoidable due to the non-availability of the witness. In the present case we however notice that copies of the statements of the witness recorded in the PE were supplied to the applicant at the commencement of the DE itself and under the circumstance, the applicant has been unable to establish that any prejudice was caused to him. It was open to him during cross examination in the DE to bring out contradiction between the statements of the PW's in the PE and in the DE, and this if anything would have been of assistance to the applicant. Hence, this argument also fails and the judgement in Khairati Lals case(Supra)

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in which there is no finding¹ that copies of the statements of the PW's in the PE was supplied to the delinquent at the start of the DE is distinguishable on facts from the present case. Hence we are not inclined to interfere with the impugned orders on this ground alone.

8. It has next been contended that this is a case of no evidence but the detailed assessment of the evidence as contained in the Enquiry Officers Report and summarised by the Disciplinary Authority in his impugned order dated 26.4.91 makes it abundantly clear that this is not a case of no evidence. The Disciplinary Authority has stated, and correctly in our view, that the evidences¹ of PW's 2,3,4 & 5 is quite sufficient to prove the charge against the applicant. In this connection, it is well settled that it is not the function of the Tribunal to reapp¹prise the evidence, or sit in appeal against the order of the Disciplinary/Appellate Authority. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the constitution and the Tribunal has to confine itself to ensuring that the applicant receives fair treatment.

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In UOI Vs. Upendra Singh (1994) 27 ATC 200 the Hon'ble Supreme Court quoted the decision in H.B. Gandhi's ~~case~~:

" Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

9. The above discussion makes it amply clear that the applicant has received fair treatment and the conduct of the DE culminating in the impugned orders contain no such infirmities as to warrant our judicial intervention.

10. This O.A. therefore fails and is dismissed. No. costs.

Lakshmi Swamithan
(Smt. Lakshmi Swamithan)
Member(J)

Adige
(S.R. Adige)
Member(A)