

Central Administrative Tribunal
Principal Bench

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OA-2559/90

New Delhi, the 6th ^{May} April, 1996.

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K. Ahooja, Member(A)

Bhaktwar Singh S/o
Shri Changa Singh r/o
V. Lihan, P.O. Bhoundri
Distt. Ludhiana(Punjab) Applicant

(Advocate: Sh. A.S. Grewal)

versus

1. Commissioner of Police,
Police Headquarters,
MSO Building, IP Estate
New Delhi.
2. Additional Commissioner of Police,
MSO Building, New Delhi.
3. Dy. Commissioner of Police,
West District,
PS Rajouri Garden,
New Delhi. ... Respondents

(Advocate: Shri Amrish Mathur)

ORDER (Oral)

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

The applicant in this case who was
appointed as a constable on 31.1.1986 and was
promoted as Head Constable on 30.6.84 was proceeded
against in a departmental enquiry vide order
dated 9.1.89. On completion of the enquiry

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the penalty of dismissal from service was imposed vide order dated 2.4.90. The applicant's appeal was also rejected by the Additional Commissioner of Police on 11.7.90. The present application is directed against the order of dismissal passed by Dy. Commissioner of Police and rejection of appeal by Additional Commissioner of Police. The allegation against the applicant is that on the night between 5/6.8.88, he visited a lady of ill repute Smt. Shammi Bai. When the local residents raised an alarm, the applicant managed to run away from the spot in underwear and baniyan leaving behind his scooter No. DE 3594 which was parked outside the flat of Smt. Shammi Bai. The detailed report of the incident was recorded by the in-charge of Police Post. The summary of the allegation stated that this act of the applicant amounted to gross negligence, misconduct and dereliction in the discharge of his official duty making ^{him} liable to be dealt with by the Department under section 21 of Delhi Police Act 1978.

2. The case of the applicant is that he had a long meritorious and blemishless service during which he had earned 35 commendation certificates with cash rewards. He alleges that the departmental action against him

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is a result of enmity of the In-charge Police Post Tilak Vihar, New Delhi who instigated the neighbour of Smt. Shammi Bai with whom he had strained relations to make false allegations against the applicant. He also submits that no fact finding or preliminary enquiry as required under Rule 15(1) of Delhi Police (Punishment and Appeal) Rules 1980 was conducted nor the approval of the Additional Commissioner of Police as required under Rule 15(2) was obtained. As regards the conduct of the enquiry he submits that only interested witnesses ill disposed towards the applicant and having strained relations with Smt. Shammi Bai were examined and there was no corroboration from any independent source. Further, more it had been proved during the enquiry that the scooter stated to have been left behind did not belong to him but was of another person Sh. Jarnail Singh who was PW8. The applicant also questions the conduct of Enquiry Officer in cross-examining the defence witness. The order of penalty has been contested on the ground that the Disciplinary Authority did not properly take into account the material on record and so far as the appeal order is concerned he submits that it is a non-speaking order. The afore-mentioned allegations of the applicant have been controverted

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by the respondents who point out that the incident in question was immediately recorded by the In-charge of Police Post, Tilak Vihar, New Delhi and preliminary enquiry under Rule 15(1) was also conducted and the allegations levelled against the applicant were fully proved. The respondents also submit that during the departmental enquiry 17 PWs were examined out of which 14 were independent public witnesses and only 3 witnesses belonged to Delhi Police force. The respondents also refute the other allegations of the applicant.

3. During the course of the arguments, the ld. counsel for the applicant sought to establish that the case against the applicant was without any foundation and considering that none of the witnesses had actually seen the applicant in the house of Smt. Shammi Bai, this was a case of no evidence whatsoever. He pointed out that the scooter did not belong to the applicant, most of the witnesses had stated that they heard from others that the applicant was inside the house of Smt. Shammi Bai, that it was patently illogical to accept that any witness could have recognised the applicant when he was allegedly sleeping in a dark room at night, that all the witnesses had said that the flat of Smt. Shammi Bai was bolted from outside then how could he have escaped and finally if the applicant had

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left the spot in his underwear then what had happened to his uniform articles. Ld. counsel also argued that all the witnesses particularly defence witness Smt. Shammi Bai had been extensively cross-examined by the Enquiry Officer. The cross-examination by the E.O. tantamounts to denial of justice to the applicant and in this context he cited the case of Abdul Wajeed vs. State of Karnataka and others - 1981 (1) SLR 454.

4. We have carefully considered the various submissions of the applicant and the arguments of the ld. counsel for the applicant but are unable to find any substance in them. Rule 15(1) provides for a preliminary enquiry but where specific information exists than such an enquiry can be dispensed with. The argument that since the allegations against the applicant constituted a cognisable offence, therefore, the order of Additional Commissioner of Police was required under Rule 15(2) which was not done in the present instance also in ^{no} way helps the applicant. The object of Rule 15(2) is clearly that a delinquent officer does not escape the rigours of law by having his conduct ^{examined} by a departmental enquiry which could result at most in a dismissal ~~from~~ service than by standing trial in court wherein he

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could even be imprisoned. The ld. counsel for the applicant could not show as to how this alleged misdemeanour disclosed a cognisable offence requiring a decision by the Additional Commissioner of Police; in any case the interest and defence of the applicant was in no way handicapped by his non-prosecution in a Court of law.

5. We are also unable to agree with the plea of the applicant that this was a case of no evidence. We have gone through the file pertaining to the departmental enquiry and find that a large number of witnesses belonging to public were examined. It is correct that some of them like PW1 Atma Singh states that they had been told by other members of the public that the applicant was inside the house of Smt. Shammi Bai but had not personally seen the applicant. However, there are other witnesses such as Smt. Hara Bai, PW4 who categorically stated that she had seen the applicant lying on the bed of Smt. Shammi Bai. No less than 14 witnesses from public have stated that there was a commotion around the house of Smt. Shammi Bai that the applicant had come for an illicit visit. In view of this it cannot be stated that there is no evidence against the applicant. This being so it is not necessary for us to go into the arguments of the applicant

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regarding the manner in which such evidence should be interpreted; the concern of this Tribunal is that the applicant receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct ^{in our view or} as decided in Supreme Court Decision in the case of B.C. Chaturvedi vs. UOI - (1996) 32 ATC 44.

6. The ld. counsel for the applicant has also argued on the question of cross-examination of the only defence witness namely, Smt. Shammi Bai. The Enquiry Officer, are not debarred from seeking clarifications and we find that the main questions put by E.O. to the witness were whether she knew the applicant and could recognise him and whether the uniform of the applicant was left behind in her house. Both of these queries were answered in the negative by the defence witness. These queries do not in any way turn the Enquiry Officer into the role of the prosecutor as we find no attempt on the part of E.O. to go beyond simple clarificatory questions.

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7. Ld. counsel also drew our attention to the order of Appellate Authority that the same is not a speaking order since the points raised by the applicant had not been answered pointwise. We have perused the order of the Additional Commissioner of Police at Annexure-E of the OA and find that this order covers the points raised by the applicant regarding the non-availability of the sanction of the Additional Commissioner of Police for initiating the enquiry as also the quantum of punishment and as regards the other points the Additional Commissioner [✓] had stated that he had ~~carefully~~ carefully gone through the records and found that many points had been properly considered by the Disciplinary Authority and rightly rejected. When the Appellate Authority agrees with the finding of the Disciplinary Authority, it is not necessary to repeat the same arguments again. The Appellate Authority having covered the new points raised by the applicant, we find the same ^{to be a} speaking and reasoned order with which no fault can be found.

8. It was also made out on behalf of the applicant that even if it was to be presumed that the allegations against the applicant were well founded and ~~correct~~ that the applicant had visited

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the house of Smt. Shammi Bai, it could not be presumed that the same was for a illicit purpose or that it was a misconduct which should have resulted in the extreme penalty of dismissal. In this connection he pointed out that the applicant had rendered meritorious service which should have also been taken into account. We consider that it is not for the Tribunal to judge whether the punishment imposed should have been removal or dismissal from service. It is open to the applicant to make an appropriate application to the concerned authorities as per the relevant rules for the grant of ~~the~~ *comparative allowance* ¹².

9. In the result, the application is dismissed. There shall be no order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member(A)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member(J)

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