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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 242/91

Date of decision: 04.08.1993.

Shri Nanak Chand

...Petitioner

Versus

Commissioner of Police & Ors.

...Respondents

Coram:-

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

For the petitioner

Shri B.S. Charya, Counsel.

For the respondents

None.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

We have heard the learned counsel for the petitioner and have gone through the record of the case with the assistance of the learned counsel for the petitioner in absence of any representative of the respondents. The case of the petitioner is that he was appointed as Constable w.e.f. 2.8.1971. He was promoted as Head Constable on 24.6.1983 when he was posted in PCR. Presently he is working in the Delhi Armed Police. He is residing in a rented accommodation bearing No.C-84, Jitar Nagar which is owned by Shri Amar Singh, father of respondent No.4, Shri Karan Singh, Deputy Superintendent of Police, Central Reserve Police Force. The petitioner has been living in the said accommodation since 1980 and is said to have been paying rent at the rate of Rs.150/- per month. About three years ago, respondent No.4 and his father wanted to increase the rent to Rs.500/-. The petitioner is stated to have expressed his illegality to pay higher rent. It is alleged that the wives of both respondents No.4 and 5 are cousin sisters. The respondent

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No.5 called the petitioner in his office on 21.10.1989 and is alleged to have directed the petitioner to vacate the said premises before 31.10.1989. The petitioner expressed his inability to do so. Thereafter a case was initiated against the petitioner on the basis of the complaint of one Shri Yash Pal, Truck Driver from whom the petitioner is stated to have taken a bribe of Rs.100 for allowing him entry with his truck at Shakarpur Chowk on 24.12.1989. The petitioner was placed under suspension on 23.3.1990 on the allegation that he had also beaten one Shri Yash Pal, truck Driver from whom he had demanded bribe of Rs.100/-. The summary of allegations was issued and the evidence of prosecution witnesses recorded. The enquiry was conducted by Shri Tek Chand, respondent No.3, Inspector, DE Cell (Vigilance), Delhi Police who was appointed as Enquiry Officer. The charge was framed against the petitioner on 27.12.1990 without recording his objection that there was no ground to frame the charge, as the evidence on record did not support the allegations against him as listed in the summary. The enquiry was continued in accordance with the rules till the stage came to record the evidence of the defence witness. The defence statement was submitted by the petitioner to the enquiry officer Shri Tek Chand, respondent No.3 on 14.3.1991, which was received by the enquiry officer on 27.3.1991 under his signature and the statements of defence witnesses were recorded in January/February, 1991. The defence statement was taken on record in March, 1991. The enquiry report was, however, finalised much before that date, as is apparent from the memo dated 10.2.93 addressed by the Deputy Commissioner of Police DE Cell, to the Deputy Commissioner of Police, Police Control Room (PCR), Delhi. The said memo reads:-

"A DE against H.C. Nanak Chand No.435/PCR has been finalized and findings there against were sent to your office vide this office memo No.3135/R/DCP/DE

Cell/Vig., dated 8.1.91. The copy of O.A. No.242/1991 and other additional documents in connection with D.E. received from the HC are being sent herewith for further necessary action at your end, as the findings has already been sent and the E.O. has since been retired from the service. Under the circumstances no action is required to be taken at this stage by this Cell."

It is apparent from the above that the enquiry report was finalised and submitted by the enquiry officer much before the enquiry officer recorded the evidence of defence witnesses and received the defence statement. Thus the essential evidence of the defence was not considered before finalising the enquiry report. It is further submitted by the learned counsel for the petitioner that the enquiry officer Shri Tek Chand, respondent No.3 has already retired from service. It is further urged before us that there were specific allegations of malafides and prejudice levelled against respondent No.5, Shri Om Bir Singh, ACP Police PCR. He has, however, not filed any counter-affidavit. The fact that the defence of the petitioner has not been taken into account was brought on record by the additional affidavit filed by the petitioner on 9.12.92. There is no reply filed by the respondents to the additional affidavit. When the case came up for admission the respondents were directed not to pass any final order in the case pending finalisation of the OA by an ad-interim order on 29.1.1991.

2. The counter-affidavit has been filed on behalf of the respondents. Since there are specific allegations levelled against the respondent No.5 it would have been proper for him to file a separate affidavit answering the allegations made against him. This has not been done. The denial in regard to the status of the petitioner with reference to the rented accommodation and various comments thereunder are of no concern to the official respondents. In paragraph 4 (v) the respondents in their

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counter-affidavit have admitted that the petitioner was indeed called by respondent No.5 A.C.P on 21.10.1989 "for giving certain instructions to remain extra vigilant and not for the purpose as alleged."

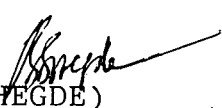
3. We have considered the submissions made by the learned counsel for the petitioner and perused the record carefully. We are of the opinion that the enquiry report is vitiated by the fact that the enquiry officer finalised the enquiry report without taking into consideration the defence of the petitioner. Admittedly the statements of defence witnesses were recorded towards the end of January, 1991 and early February, 1991. The defence statement was received by the enquiry officer in March, 1991, whereas the enquiry report had been submitted to the disciplinary authority under letter dated 8.1.1991. This clearly establishes that the enquiry officer completed and finalised the enquiry without taking into consideration the statements of defence witnesses which he had recorded. The defence statement submitted by the petitioner has also apparently been ignored. In the above circumstances the enquiry report has been finalised in violation of the statutory provisions made in the Delhi Police (Punishment & Appeal) Rules, 1980 and is, therefore, vitiated. The enquiry report is accordingly set aside and quashed. Since the enquiry officer has already retired from service and there are allegations against the senior officers of the Delhi Police, we direct the Commissioner of Police, Delhi or any senior officer not below the rank of Additional Commissioner of Police, nominated by him to go through the record of the case to determine if the case merits to be pursued. If it is decided to pursue the matter the enquiry shall be held afresh from the stage of summary of allegations and enquiry finalised in accordance with law, duly taking into consideration the defence of the petitioner, if produced before the enquiry officer so

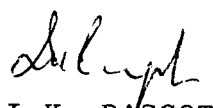
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appointed for the purpose. The respondents are directed to take immediate action to review the case as early as possible but preferably within a period of 8 weeks from the date of communication of this order. The disciplinary proceedings if decided to be pursued shall be finalised within six months thereafter. The petitioner shall extend full cooperation, in that case to the respondents.

4. The O.A. is disposed of as above. No costs.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

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