

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

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O.A. No.3001 of 1991

New Delhi, dated this the 28th ~~January~~ February, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Kuleep Singh,
S/o Shri Hari Singh,
R/o House No.8, Vill. Tigri,
P.O. Madangir,
New Delhi-110062. APPLICANT

(By Advocate: Shri Shankar Raju)

VERSUS

1. Commissioner of Police,
Delhi,
Delhi Police Hqrs.,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. Addl. Commissioner of Police,
Southern Range,
New Delhi,
Delhi Police Hqrs.,
M.S.O. Building,
I.P. Estate,
New Delhi.
3. Dy . Commissioner of Police,
South Distt.,
Hauz Khas,
New Delhi. RESPONDENTS

(By Advocate: Shri Rajinder Pandita)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Ex-Constable,
Delhi Police, Shri Kuldip Singh has impugned
the

- (i) order dated 11.9.90 (Ann. A) by
which a D.E. was initiated against
him
- (ii) the E.O.'s findings dated
(Ann. E)
- (iii) order dated 8.3.90 (Ann. B)
passed by the DCP, South Dist.
- (iv) Penalty order of dismissal dated
3.5.91 (Ann. F)
- (v) the appellate order dated 22.7.91
(Ann. G) rejecting the appeal.

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2. Shortly stated the applicant was appointed as a constable in Delhi Police on 12.3.82. On 8.2.90 three labourers namely Radhey Shyam, Rajpal Singh and Shiv Kumar went to P.P. Amar Colony where the applicant was posted, and sought help for recovery of Rs.2200/- from the Factory owner, one Smt. Meena Mishra, A-25, Garhi which had been [^]withheld by her. The applicant alongwith three labourers went to the factory to settle the problem. The factory owner gave Rs.1000/- to the applicant for payment who [^]allegedly kept Rs.200/- with himself and gave Rs.800/- to the labourers.

3. The applicant was suspended by order dated 8.3.90, and with the prior approval of Addl. Commissioner of Police vide order dated 1.8.90, a regular D.E. was initiated against the applicant. The E.O. in his impugned finding held the applicant guilty of the charge. A copy of the E.O.'s findings was furnished to the applicant on 9.3.91 affording him an opportunity to make representation/submission if any, to which the applicant submitted his reply on 21.3.91. The applicant was heard by the Disciplinary Authority in the orderly room on 26.4.91 and after discussing the findings of the E.O. in detail, and the representation made by the applicant, imposed the penalty of dismissal by order dated 3.5.91 which was upheld in appeal vide order dated 22.7.91, against which this C.A. has been filed.

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4. We have heard applicant's counsel Shri Shankar Raju and the respondents counsel Shri Rajinder Pandita.

5. The first ground taken is that the requirements of Rule 16(3) Delhi Police (F&A) Rules, 1980 have not been complied with, which provides that statement of witnesses shall be recorded direct and in the presence of the delinquent. The applicant contends that in his case the statements of the complainants were not recorded at all. Rule 16(3) reads as follows:

" If the accused police officer does not admit the misconduct, the E.O. shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The E.O. is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the E.O. may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record".

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6. We notice that this point has been discussed in detail by the Disciplinary Authority in paragraph 5 of his order dated 22.7.91. He has observed that the E.O. had relied upon the written statement of PW-1 Inspector D.D.Sharma the then SHO, Lajpat Nagar and the joint written statement/complaint of the complainants submitted earlier, because they could not be made available. Rule 16(3) permits such an earlier statement to be brought on record if the witness cannot be made available, but such ~~statement~~ statement should have been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate and should either have been signed by the person making it, or should have been recorded by such officer during an investigation or a judicial inquiry or trial. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statements of the witnesses concerned.

7. In the case before us the written complaint is no doubt available in the D.E. file (PW-1/A) which was shown to us, and a perusal of the same shows ~~that~~ that it carries the signatures of Radhey Shyam, Rajpal Singh and Shiv Kumar, but that written complaint nowhere bears any signature in attestation by a police officer superior in rank to the applicant or by a Magistrate. When we

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brought this to the notice of respondents' counsel he had sought time to consult his client and thereafter by letter dated 2.5.96 which is on the D.E. record the respondents have informed their counsel that on scrutiny of the records it appears that in the instant case the complaint in the shape of statement of the complaints against the applicant was received by the Inspector D.D. Sharma, the then SHO Lajpat Nagar who had inquired into it after verifying its contents. He had sent the same to the Disciplinary Authority for necessary departmental action against the defaulter. During the D.E. proceedings the complaint was exhibited, and PW-1 Inspector D.D. Sharma testified to its authenticity as two of the complainants cited as PWs did not turn up, nor could be traced by the E.O.

8. Is the non-attestation of the written complaint serious enough to vitiate the departmental enquiry? The D.E. record shows that the written complaint was exhibited as PW 1/A and during cross-examination by applicant, the SHO who had himself received the complaint, has testified that he had thoroughly inquired into its contents and verified its authenticity. This testimony remains unshaken, and applicant has not been able to establish any good reasons as to why we should doubt its veracity. Under the circumstances, the non-attestation of the written complaint is at most a procedural irregularity, and is not a material illegality so fatal as to prejudice applicant's defence and vitiate the D.E. so as to warrant our judicial intervention on this ground alone. In this connection in S.K. Banerjee Vs. State of West Bengal 1980(3)SCC 304 it has been held that the departmental proceedings shall not be quashed unless prejudice is established.

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9. The next ground taken is that it is a case of no evidence. As pointed out by the Disciplinary Authority, admittedly the applicant did visit Smt. Mishra's factory and there is the voucher on record dated 8.2.90 to show that the payment of Rs.1000/- was made to Rajpal Singh, one of the workers. This coupled with the statement of PW-1 Inspector D.D. Sharma and the joint statement/complaint submitted by the workers does point to the preponderance of probability of the applicant committing the misconduct of which he is alleged. Hence this is not a case of no evidence and this ground also fails.

10. ^{Next} ~~Next~~ it has been urged that copies of statements recorded during the fact finding inquiry and copy of the report of Inspector D.D.Sharma were not supplied to the applicant. No statements appear to have been recorded during the fact finding inquiry, the non-supply of which might have *prejudiced* the applicant, and in their reply respondents have stated that they supplied copy of Inspector D.D. Sharma's report to which there is no rebuttal by way of rejoinder.

11. Lastly it has been urged that the punishment is unduly harsh, but it is well settled in UOI Vs. Parmaranda AIR 1989 SC 1185 that while the penalty can lawfully be

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imposed and is imposed, the Tribunal has no power to substitute its own discretion for that of the competent authority and interfere with the penalty.

12. Under the circumstances the O.A. warrants no interference. It fails and is dismissed. No costs.

Lakshmi Swaminathan

(Mrs. LAKSHMI SWAMINATHAN)
Member (J)

S.R. Adige

(S.R. ADIGE)
Member (A)

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