

(P)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 341/91.

Date of decision: 19-5-95

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

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Ramesh Kumar,
S/o Shri J.S. Guleria,
R/o Chandu Park,
Krishna Nagar,
Delhi-51.

... Applicant

(By Advocate Shri B.S. Charya)

versus:

1. Commissioner of Police,
Delhi Police,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi - 2.

2. Union of India,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.
(through its Secretary)

3. The Deputy Commissioner of Police (PCP),
Delhi Police,
Public Control Room,
Headquarters, MSO Building,
I.P. Estate, New Delhi-2.

Respondents

(By Advocate Shri S.K. Sinha proxy counsel
for Shri Jog Singh)

O_R_D_E_R

Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)

The applicant, who was working as Assistant Sub-Inspector of Police was dismissed from service by order dated 14.5.1990 after holding a departmental enquiry against him under Section 21 of the Delhi Police Act. He has challenged the dismissal order dated 14.5.1990 (Annexure P-1) and the Appellate Order passed by the Additional Commissioner of Police (OPR)

Delhi dated 12.11.1990 (Annexure P-3) rejecting his appeal.

2. The relevant facts and events leading to the disciplinary proceedings and the impugned orders, as seen from the records are briefly given below in chronological order.

The applicant, who was appointed as Head Constable on 2.9.1978 in Delhi Police, was promoted as Assistant Sub-Inspector on 8.6.1987. On 22.7.1988, the applicant was issued an advisory memo by the Assistant Commissioner of Police (Headquarters) (Annexure P-15). In this memo, the Assistant Commissioner of Police had stated " I have definite information that you have taken Rs. 6,000/- from Shri Sunil Kumar Chopra (at some places mentioned as Sushil Kumar Chopra), who had recently fitted cooking gas pipelines in all police stations for the reasons best known to you. Your act of inactness and impudentness is contaminating the atmosphere of the Branch, you are hereby advised to refrain yourself from such activities else departmental action will be taken against you". According to the applicant, the allegations in this memo, were false and vague. He was not called upon to explain his conduct and he states that the allegations stood closed after the memo was issued. On the other hand, the respondents have stated, in their reply, that the Additional Commissioner of Police had enquired into the matter from Shri Sunil Kumar Chopra, proprietor of M/s. South Delhi Gas Service, who accepted that he paid

Rs. 6,000/- to the applicant but refused to give in writing because he was afraid that his company will be black-listed, as a result of which the advisory memo. had been issued to the applicant on 22.7.1988 advising him to refrain from such activities.

3. Later, one Head Constable, Shri Lalit Kumar, made a complaint against the applicant on 23.8.1988 regarding the applicant's having accepted Rs. 70/- illegally from him for the grant of House Rent Allowance to him. The Additional Commissioner of Police (Headquarters) had ordered on 23.8.1988 that "on earlier complaint, his (applicant's) name had been brought on the list of officers of doubtful integrity, still he had not reformed himself. As the charges are serious, it is recorded that he may be placed under suspension and departmental proceedings be initiated for the above allegations". Accordingly, the applicant was suspended vide order dated 25.8.1988 (Annexure P-4). A show-cause notice was issued on 13.9.1988 by the Deputy Commissioner of Police as to why he should not be censured on the allegation that he had accepted Rs. 70/- from H.C. Lalit Kumar (Annexure P-14), to which he submitted his reply on 27.9.1988 (Annexure P-13). By the Order dated 28.11.1988, the Deputy Commissioner of Police confirmed the notice of censure and treated the suspension period with effect from 25.8.1988 to 12.9.1988 as not spent on duty (Annexure P-16, of rejoinder). The applicant did not file any appeal against this order and according

to him, the show cause notice of 13.9.1988 also stood closed by this order of censure.

4. However, the Additional Commissioner of Police (Operation), Delhi, by his order dated 29.3.1989 (Annexure P-21) thought that the allegation of illegal gratification is very serious and grave for which punishment of censure was inadequate and set aside the order passed by the DCP. In this order he also mentioned that the applicant had ~~sub-let~~ sub-let Government quarter No. 357-1 to a public man thus violating the instructions contained in Office Order No. 111 of 1979. It was also mentioned that the applicant had taken a bribe of Rs. 6,000/- from Shri Sunil Kumar Chopra for installation of cooking gas pipelines in the Police Stations of East District. The Additional Commissioner of Police, therefore, ordered that a regular departmental enquiry under Section 21 of the Delhi Police Act be initiated against the applicant on the above allegations.

5. The departmental enquiry was accordingly entrusted to an Enquiry Officer. The charge was received by the applicant on 23.10.1989 and was as follows :-

" I Suchindra Singh Inspr. of DE CELL VIC, charge you ASI Ramesh Kumar No. 254/SB (now 5022/PCR) that on 6.8.98 while posted as dealing Asstt. II dealing with HRA in General Branch DCP/East Distt. office you took Rs. 70/- as bribe money from HC Lalit Kumar No. 163/E for the grant of HRA to him. You also took Rs. 6000/- as bribe money from M/s. Sushil Kumar Chopra, Moti Bagh, New Delhi for installation of 'Cooking Gas Pipeline' in the Police Stations of East Distt. you subleted Govt. Quarter No. 357-I PTS Malviya Nagar allotted to you, to some civilian family which was occupied by them, on rent."

12

6. The Enquiry Officer found the above charge against the applicant proved on the basis of the evidence produced before him in his report dated 13.12.1989 (Annexure P-11). Based on this, the impugned punishment orders were passed after issuing a show-cause notice to him and affording him an opportunity to show-cause.

7. We have heard Shri B.S. Charya, learned counsel for the applicant at great length and Shri S.K. Sinha Proxy-Counsel for Shri Jog Singh for the Respondents and perused the records. The respondents have also produced the original record pertaining to the disciplinary enquiry proceedings.

8. Shri Charya has rightly pointed out that there are three separate parts to the charge, namely, -

- (i) That on 6.8.1988, while the applicant was posted as Dealing Assistant II dealing with House Rent Allowance in General Branch, DCP, East District, he took Rs. 70/- as bribe money from Shri Lalit Kumar, for grant of HRA to him;
- (ii) That he took Rs. 6,000/- from M/s Sushil Kumar Chopra for installation of cooking gas pipelines in Police Stations of East District; and
- (iii) Sub-letting of quarter No. 357/1, PTS, Malviya Nagar, allotted to him to some civilian family which was occupied by them on rent.

He submits that not only the charges are vague but they are also baseless. According to him, since the respondents did not have sufficient evidence to proceed against him on the alleged Rs. 6,000/- bribe, they issued the advisory memo. dated 28.7.1988 and the case was closed.

19
It cannot then be reopened. The department had not

explained the reasons why he should have taken the
bribe nor does he give the time and place and
so it is vague. The counsel also submitted that
the order of censure passed on the charge of taking
Rs. 70/- as bribe was also final and cannot be
re-opened. The Deputy Commissioner of Police is the
disciplinary authority and since the applicant had not filed
any appeal against the order, the Additional Commissioner
of Police had no powers to cancel the order or remit
the case as ordered on 29.3.1989. He has referred
to Rule 25 of the Delhi Police (Punishment & Appeal)
Rules, 1980 under which the Appellate Authority
can only pass the orders mentioned therein on appeal
being filed, which was not the case here. The power
of review under Rule 25-B was added only on 29.6.1994
and cannot be relied upon by the respondents in this
case. He also relies on Constable Harish Chander v.
UOI & Ors., (1989 (1) ATLT (CAT) 203 to show that censure
is itself a minor penalty and he could not, therefore,
be punished twice for the same offence.

9. In the third limb of the charge of sub-letting,
Shri Charya strongly urged that the name of the public
man/civilian family is not given, the rent is not speci-
fied nor the date from which the quarter was found
sub-let is mentioned in the charge and so this charge
is also vague and unsustainable. He relied on Sawai
Singh v. State of Rajasthan (AIR 1986 SC 995).

18/ Therefore, on these grounds, the learned counsel

submits that the three allegations could not have been proceeded with by the disciplinary authority.

10. The next main ground taken by Shri Charya is that there was no evidence to support the conclusion arrived at by the Enquiry Officer or the disciplinary authority in this case. Relying on the judgment of the Supreme Court in Union of India v. H.C. Goel (AIR 1964 SC 364) he submits that mere suspicion should not be allowed to take the place of proof even in ^a domestic enquiry. The evidence of Head Constable Lalit Kumar, who was the complainant in the first part of the charge has not been corroborated. He relies on the observation of the Supreme Court in Raghbir Singh v. State of Haryana (AIR 1974 SC 1516 - p. 1521) that in a bribery case, ^{the} ~~payer's~~ testimony carries little conviction in the absence of re-assuring support. Shri Charya submits that there are no cogent or reliable evidence against the applicant on which the bribe charges could be stated to be proved in the light of the evidence of PW 7 (Shri Sunil Kumar Chopra), who categorically stated that he had not given any amount of Rs. 6,000/- to any one in the office of Additional Commissioner of Police, including ASI Ramesh Kumar (the applicant). The complaint of taking Rs. 70/- as bribe was not made immediately, as the complainant HC Lalit Kumar had already received the House Rent Allowance amount on 7.6.1988. He states that he gave the bribe on 6.8.1988 and subsequently made the complaint to Assistant Commissioner of Police on 23.8.1988 i.e. after nearly two weeks

(X)

Besides, according to learned counsel, the complainant's evidence cannot be relied upon in the absence of other evidence to corroborate it (see also 1986(1) ATR 424 at p. 429). The learned counsel submits that in the present case there was no conclusive evidence to show that the applicant is guilty of the ^{crime} charge levelled ¹⁸ against him. He also relies on another judgment of the Supreme Court in Suraj Mal v. The State (Delhi Administration) (AIR 1979 SC 1408) that the statement of witnesses giving inconsistent statements cannot be relied upon. He, therefore, submits that ^{since} this is a case of no evidence ^{which} ¹⁸ justifies interference by this Tribunal.

11. Shri S.K. Sinha, learned counsel for the respondents, submits that issuing an advisory memo. is not a punishment as provided in Rule 5 of the Delhi Police (Punishment & Appeal) Rules, 1980. Therefore, there was no question of double jeopardy in this case. He submits that the charges are not vague and they have been proved by the evidence adduced during the enquiry proceedings. He submits that the Additional Commissioner of Police (Headquarters), Shri Banwari Lal, had himself deposed at the enquiry proceedings that he learnt that the applicant had taken Rs.6,000/- from Shri Chopra on which he had given him an advisory memo. Later, when HC Lalit Kumar submitted an application before him that the applicant had taken Rs. 70/- for getting house rent allowance sanctioned,

he had sent a note to DCP/East District, who had ordered a preliminary enquiry. After the preliminary enquiry, the Additional Commissioner of Police had ordered a departmental enquiry under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules. He submits that the ACP had definite information that the applicant had taken Rs. 6,000/- from Shri Sunil Kumar Chopra in connection with the installation of gas pipelines in the Police Stations. The learned counsel submits that both the dismissal order dated 14.5.1990 and the appellate order dated 12.9.1990 rejecting his appeal are in accordance with the rules and there was no illegality. He further submits that under the rules, the ACP is competent to cancel the order of the disciplinary authority if he deems that the punishment awarded to a Government servant is inadequate or order a fresh enquiry or re-open the case, taking into account the gravity or misconduct alleged against the applicant.

12. We have carefully considered the arguments of both the learned counsel and the records.

13. On a perusal of the charge levelled against the applicant, we find that there is force in the submissions made by the applicant's counsel that they are vague. In a case involving serious misconduct of accepting bribe, although we fully appreciate the anxiety of the respondents to root out corruption

from public service, as observed by the Supreme Court in Union of India v. H.C. Goel (Supra), we cannot ignore the fact that in carrying out the said purpose, mere suspicion is not enough to take the place of proof even in ^{a P} domestic enquiry. In the first charge against the applicant of receiving Rs. 70/- as bribe money from HC Lalit Kumar for grant of house rent allowance to him, other than the evidence of the complainant, there was no other evidence produced before the departmental enquiry to show either the giving or receiving of the money. In the case of the second charge of taking Rs. 6,000/- as bribe money from Mr. Chopra, this witness has categorically denied that he had given any such amount to the applicant. Shri Banwari Lal, ACP, PW-5, who issued the advisory memo, had stated that he learnt that the applicant had taken this amount from Mr. Chopra. The respondents' contention that Mr. Sunil Kumar Chopra had not given anything in writing about his giving the bribe to the applicant because he was afraid that his Firm may be black-listed would not be sufficient reason as to why the respondents could not produce any other evidence to support the charge. In other words, the evidence of PW-5 and PW-7 are contradictory, and cannot be solely relied upon in the absence of any other reliable evidence. Having regard to the observations of the Supreme Court in the cases of UDI v. H.C. GOEL (Supra) and Suraj Mal v. The State (Delhi Administration (Supra), the conclusion arrived at in this case by the Enquiry Officer and the disciplinary authority

(gc)

seem to be based on mere suspicion rather than on any evidence proving the guilt of the applicant.

Lastly, the third charge of sub-letting the quarter allotted to the applicant also suffers from vagueness as neither the date on which it was found sub-let has been given or the names of the civilian family to whom it was sub-let on rent, or the amount of rent etc. has been specified in the charge-sheet. Such a vague charge cannot be held to be in accordance with the requirements of the principles of natural justice as it does not afford a reasonable opportunity to the charged official to meet the charge. The Respondents should have given the necessary particulars pertaining to the sub-letting of the government quarter as found by the checking party which it has failed to do.

In this connection, we may refer to the observations of the Supreme Court in Sawai Singh v. State of Rajasthan (Supra) where it was held as follows (pp.998-999) :-

"... It appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence adduced was perfunctory and did not at all bring home the guilt of the accused."

xxx xxx

"It has been observed by this Court in Surath Chandra Chakravarty v. State of West Bengal (1971) 3 SCR 1: (AIR 1971 SC 752) that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of State of Andhra Pradesh v. S. Sree Rama Rao (1964) 3 SCR 25: (AIR 1963 SC 1723) and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But a departmental enquiry entailing consequences

J.S.

like loss of job which now-a-days means loss of livelihood, there must be fair play in action, in respect of an order involving adverse or penal consequences against an employee, there must be investigation to the charges consistent with the requirement of the situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation."

14. We are aware that normally, the Tribunal is not to re-appraise the evidence adduced before the Enquiry Officer or the competent authority or interfere with their findings where they are not arbitrary or utterly perverse UOI v. Parma Nanda (AIR 1989 1185).

However, in this case, for the reasons given above, we find that not only the charge is vague and, therefore, unsustainable, but the findings of the Enquiry Officer and the competent authority are based on suspicion and not on any reliable evidence.

15. In these circumstances, following the decisions of the Supreme Court referred to above, the impugned orders of dismissal dated 14.5.1990 and the appellate order dated 12.11.1990 are unsustainable as they are based on vague charges and suspicion without any reasonable proof required even in a domestic enquiry, contrary to the principles of natural justice, and hence arbitrary and perverse. The impugned orders are, therefore, quashed and set aside. The applicant shall be reinstated in service and entitled to consequential benefits in accordance with law.

16. There will be no order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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