IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.356/1991 DATE OF DECISION:22.05.1992.

EX. CONSTABLE ANANG PAL SINGH ...APPLICANT

VERSUS

COMMISSIONER OF POLICE & ANOTHER ...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI SHANKER RAJU, COUNSEL.

FOR THE RESPONDENTS MS. GEETA LUTHRA, COUNSEL.

1. Whether Reporters of Local Papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes

(I.K. RASGOTRA)
MEMBER(A)

(P.K. KARTHA)
VICE-CHAIRMAN

May 22, 1992.

(13)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Ex. Constable Anang Pal Singh has filed this Original Application, under Section 19 of the Administrative Tribunals Act, 1985, challenging the order No.14819-919-VIG/HA.VI dated 2.5.1990 passed by the Additional Commissioner of Police (ACP), Northern Range, dismissing the applicant from service and treating the period of suspension from 8.9.1986 to 18.8.1987 as 'not spent on duty' and order No.27885-86/CR-I dated 26.12.1990 issued by the Commissioner of Police, rejecting his appeal against the above impugned order of dismissal from service. The applicant has also assailed the disciplinary proceedings and the findings of the enquiry officer.

2. The facts of the case briefly are that the applicant was enrolled as a Constable in Delhi Police on 11.2.1977. He was placed under suspension on 8.9.1986, when a regular departmental enquiry was ordered. At the relevant time the applicant was posted in Special Staff, North District. In the summary of allegations, furnished to the applicant under memo dated 30.6.1987, it is alleged that when the applicant was posted in Special Staff a thief was caught on 6.9.1986 who disclosed

about the commission of theft of a number of cylinders and their disposal to one Pawan Kumar Gupta. Shri Pawan Kumar Gupta who was interrogated by the Special Staff was allegedly let off, after acceptance of Rs.40,000/- as illegal gratification. It is further alleged that the money was accepted by S.I. Diwan Singh, who brought this fact to the notice of his Inspector and thereafter made over the money to the applicant, which was later on recovered from the box of the applicant by S.I. Ramesh Chand. A charge memo was issued to the applicant vide Annexure A-3 (page 33 of the paperbook) and thereafter the disciplinary proceedings were completed by the enquiry officer, who in his findings came to the conclusion "it is proved against all the defaulters that a collection of Rs.40,000/- as illegal gratification was in the common knowledge of all charged officers, while the recovery of Rs.40,000/- was made from the defaulter Constable Anang Pal." The disciplinary authority, agreeing with the findings of the enquiry officer, issued show cause notice to the charged officials as to why they should not be dismissed from service for the allegations proved in the departmental enquiry against them on 19.12.1989. After receiving the reply from the respective charged officials, the disciplinary authority imposed the penalty of dismissal from service on Constable Anang Pal Singh with a further order that the period of suspension from 8.9.1986 to 18.8.1987 be treated as 'not spent on duty'. In the case of S.I. Rajinder Singh, however, the disciplinary authority awarded the punishment of forfeiture of three years' approved service permanently, entailing reduction in pay from Rs.1,460/- to Rs.1,320/- per month, reducing his pay by three stages in the time scale of pay for a period of three years, with the provision that the reduction will have the effect of postponing his future increments of pay.

3. The applicant has prayed for the following reliefs:-

i) To quash the impugned order of dismissal from service dated 2.5.1990, passed by the disciplinary authority, with direction to the respondents to re-instate the applicant in service from the same date alongwith all consequential benefits, including seniority, promotion and continuity of service.

ii) To direct the respondents to treat the suspension period of the applicant as spent on duty for all purposes and finally to set aside the appellate order dated 26.12.1990, passed by the appellate authority.

The applicant had filed a Miscellaneous Petition No.2473/91, which came up for hearing on 6.9.1991, praying for interim relief. After hearing the matter the Tribunal passed the following interim order on 6.9.1991:-

"In the meanwhile, the respondents are directed not to dispossess the applicant from the Government quarter No.A-3/1, Type 'A', Police Station Model Town, Delhi110 009, subject to the liability to pay licencing fee etc. in accordance with the relevant rules."

The said interim order was continued from time to time.

4. The impugned orders of the disciplinary authority and appellate authority have been assailed by the applicant principally on the following grounds:-

a) The impugned orders are in contravention of Rule 15 (1) and 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as the Rules) which prescribe holding of a preliminary enquiry with a view to establish the nature of the default and identity of the defaulter, collection of prosecution evidence etc. and only where such preliminary enquiry discloses the commission of congnizable offence, the departmental enquiry shall be ordered after obtaining prior approval of the ACP concerned, as to whether criminal case should be registered and investigated or a departmental enquiry should be held. In the present case the ACP

16

ordered the departmental enquiry without holding of a preliminary enquiry.

b) The impugned orders are bad in law, as the applicant's appointing authority is Deputy Commissioner of Police (DCP) whereas the punishment has been inflicted on him by an order passed by the ACP. The order, imposing the punishment is, therefore, in contravention of Rule 6 of the Rules.

This ground, however, is not sustainable as Rule 6 provides that: "Punishments mentioned at Sl.Nos.(i) to (vii) above shall be deemed 'major punishment' and may be awarded by an officer of the rank of the appointing authority or above after a regular departmental enquiry." Accepting that the appointing authority of the applicant was DCP, he has been awarded punishment by the authority higher in rank than the appointing authority.

c) The next ground of attack is that the impugned order is discriminatory and in violation of the Articles 14 & 16 of the Constitution of India on the ground that a lesser punishment has been imposed on A.S.I. Rajinder Singh, who was equally held liable for the misconduct by the enquiry officer.

d) Another ground assailing the impuged order is that it is in violation of the Rule 16 (x) of the Rules, as the disciplinary authority has not given a finding in the show cause notice on each charge. The said Rule makes it incumbent on the disciplinary authority to consider the record of the enquiry and pass orders on the enquiry on each charge. The applicant contends that the charge proved against him was of illegal gratification passed over to him by the S.I. Dewan Singh and putting the same in his box from where it was recovered. Thus the disciplinary authority has not complied with Rule 16 of the Rules.

e) Yet another ground of attack is that the enquiry officer assumed the role of prosecutor and cross examined the

defence witnesses at length. This allegation is said to be supported from the enquiry report at Annexure A-6. The applicant submits that the enquiry officer is prohibited from taking this role, as held in **Sat Pal Vs. Delhi Admn. 1990 ATLT CAT PB 304.**

f) The Show Cause Notice has too been faulted for the reason that the disciplinary authority has not disclosed the provisional punishment proposed to be therein and finally the disciplinary authority, according to the applicant, has not passed a reasoned order, as he has not mentioned/ controverted the contentions of the applicant raised in the reply to the show cause notice.

g) 'No evidence' is one of the grounds which was dwelt upon at length by the learned counsel for the applicant, when he submitted that the applicant has been held guilty without any credible evidence merely on the basis of suspicion, surmises and conjectures. In support of his case he cited **Union of India Vs. H.C. Goel AIR 1964 SC 364.**

5. The learned counsel for the applicant also submitted that the charge against the applicant regarding the recovery of Rs.40,000/- from his box does not mention as to from where the said amount was recovered. He, therefore, averred that the charge was vague and not specific.

6. The respondents in their counter-affidavit have taken the stand that the charge framed against the applicant was specific inasmuch as he was charged for demanding/accepting illegal gratification, as mentioned in line 8 of Annexure-3 to the O.A. The accused Pawan Kumar was let off after accepting the illegal gratification and the applicant has been guilty of the charge which is specifically mentioned in the charges-heet. It is on record that the Special Staff had admitted after hesitation the receipt of illegal gratification of Rs.40,000/- and that the said amount was recovered by the S.I. Ramesh Chand and Constable Dala Ram at the behest of the then DCP, North District, Smt. Kiran Bedi from the box of the applicant. The

respondents affirm that the finding is based upon direct evidence which has been placed by the prosecution to prove the demand and the acceptance of the bribe money. The respondents further urge that it is the well settled legal position that the Court cannot sit in appeal over the decision of the disciplinary authority, arrived at after holding a departmental enquiry against a public servant who has been held guilty on the basis of some evidence adduced in the enquiry and which reasonably supports the conclusion that the charged officer was guilty. It is not the function of the Court to review or appraise the evidence with a view to arrive at independent findings of the evidence. The respondents have also distinguished the various authorities quoted by the applicant in support of his case. They also deny that there was any discrimination in awarding lesser punishment to A.S.I. Rajinder Singh. The punishment awarded to him is commensurate with the guilt established against him. The learned counsel for the respondents also referred us to the Rule 15 (1) and 15(2) of the Rules and submitted that in the facts of the case the said Rules have not been contravened in any manner whatsoever. A preliminary enquiry is required to be held with a view to see if there was a prima facie case, warranting further enquiry. In the present case no preliminary enquiry was required to determine if a prima facie case existed. The invocation of Rules 15 (1) and 15(2) is neither relevant nor germane in the present case.

7. We have heard the learned counsel for both parties and perused the material on record. In **Union of India Vs. Parma Nand 1989 (1) ATLT SC 480** their Lordships pointedly re-iterated the declared law that the Tribunals have no discretion to interfere with the penalty awarded by the competent authority on the basis of the enquiry proceedings except in certain circumstances. Paragraph 27 of the said judgement, which is relevant is reproduced below:-

> "27. We must unequivocally state that jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an

appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter the Tribunal to concern with. The Tribunall also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

In the present case there is no material on record which can be said to provide any evidence to support 'discrimination'. In fact in **Parma Nand** (supra) case also this issue was raised that while the respondents and two others after a common detailed enquiry had been found guilty of the charges framed against each of them, the competent authority after considering the report of enquiry officer dismissed the respondent from service while the other two persons were let off with minor punishment of withholding two or three future increments. Their Lordships rejected the argument of discrimination as the punishments imposed were differential. We have also observed that the disciplinary authority was the competent authority and in fact it was higher in rank than the appointing authority of the applicant, and, therefore, no rule was infringed by the respondents. We are also of the opinion that the argument, that the disciplinary authority did not give

finding on each charge lacks conviction, as the charge against the applicant was only one although it may have several sub-components which are inter-twined. For the purpose of record it may be stated that the charge related to the demand and receipt of illegal gratification, amounting to Rs.40,000/- by the applicant and others. The Enquiry Officer after carefully considering the material brought on record during the disciplinary proceedings came to the conclusion "it is proved against all the defaulters that a collection of Rs.40,000/- as illegal gratification was in the common knowledge of all while the recovery of Rs.40,000/- was made from defaulter Constable Anang Pal." This conclusion had been arrived at on the basis of the evidence, as discussed in the findings of the Enquiry Officer. This is not a case of 'no evidence'. The determination of the quantum of punishment to be imposed does not fall within the sphere of the judicial review. There is also no malafide nor it is anybody's case that the disciplinary proceedings have been conducted in a unlawful manner and without giving opportunity to the applicant to defend himself in accordance with the principles of natural justice.

In view of the above, we are of the opinion that the Application is bereft of merit and the same is dismissed.

There will be no order as to costs. The interim order passed on 6.9.1991 is hereby vacated.

22/5/92

(I.K. RASGOTRA)
MEMBER(A)

22/5/92

(P.K. KARTHA)
VICE-CHAIRMAN

May 22, 1992.

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