

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

12

O.A./~~T.A.~~^{XXXX} NO. 550 /1991 Decided on : 29.9.95

Shri Jai Singh ... Applicant(s)

(By Shri S.K. Bisaria Advocate)

versus

Commissioner of Police & Anr.... Respondent(s)

(By Shri S.K. Gupta, proxy Advocate)
Counsel for Shri B.S. Gupta, Counsel

BY SHY

CORAM

CORAM

THE HON'BLE ~~SHRI~~ MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. To be referred to the Reporter or not ? *yes*
2. Whether to be circulated to other Benches *no*
of the Tribunal ?

h
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH (13)

O.A. No. 550 of 1991

New Delhi this the 29th day of September, 1995

HON'BLE MR. LAKSHMI SWAMINATHAN, MEMBER(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)

Shri Jai Singh
C/o Shri Jagat Singh
H.No. 187, Haiderpur,
Delhi.

...Applicant

By Advocate Shri S.K. Bisaria

Versus

1. Commissioner of Police,
Delhi.
2. Additional Dy. Commissioner of Police,
Central District,
Delhi. ...Respondents

By Shri S.K. Gupta, proxy counsel for
Shri S.K. Gupta, Counsel for the respondents.

ORDER

Hon'ble Mr. K. Muthukumar, Member(A)

This application filed under Section 19 of the Administrative Tribunals Act, 1985, is directed against the order of dismissal from service of the applicant by the respondents' order dated 19.10.1990 and the rejection of the appeal against that order by the appellate order dated 4.3.1991. The facts in this case briefly stated are that the applicant was a confirmed Constable in Delhi Police. While on beat duty between 10.00 A.M. to 2.00 P.M. in Rajindra Palace on 10.05.89, it was alleged that he had taken 5 persons to the Prasad Nagar, Police Station illegally and without any cause and under threat with ulterior motive and also abused and misbehaved with them and

snatched Rs.650/ from one Shri Hussain Ahmed, one of the 5 persons. On the basis of this charge, disciplinary enquiry was conducted by the respondents and on the charges having been held as proved, was dismissed from service.

2. The applicant alleges that the respondents have originally issued an order of punishment of forfeiture of entire approved service but had later on withdrawn that order on administrative grounds and within a few days had issued an order of dismissal, as the complainants had approached the Hon'ble Minister of Petroleum. After this incident, the respondents took a vindictive action by issue of punishment order of dismissal without any further enquiry and without affording any reasonable opportunity to the applicant and without giving any reason for enhancing the punishment. The applicant also alleges that the Enquiry Officer returned an adverse finding although the charges were without any evidence and, therefore, the findings and the punishment based on such findings are liable to be quashed. The applicant also alleges that the Enquiry Officer disbelieved the statement of the Duty Officer of the Police Station who had deposed that all the 5 persons were brought to the Police Station by the applicant alongwith another Constable under instructions and order of one Shri Ramesh Kumar, Sub-Inspector (PW5). In the enquiry, the statement of witnesses S/Shri Hussain Ahmed and Amir Hussain were totally contradictory in nature on the question of the applicant's snatching the purse and taking the money from Hussain Ahmed and, therefore, there was no evidence at all about his alleged misconduct and,

h

therefore, contends that the said punishment order, which is based on no material on evidence, is liable to be quashed.

3. The respondents have strongly contested the allegations of the applicant. The respondents contend that the action was taken on the basis of the complaint by Shri Hussain Ahmed, one of the 5 persons taken to the Police Station by the charged officer and the allegation against the applicant was that of corruption and, therefore, preliminary enquiry was ordered to ascertain the facts of the case and on the basis of the decision to entrust the matter to a regular departmental enquiry, departmental proceedings were started against the applicant. Although show cause notice was initially issued for forfeiture of entire service of the applicant, it was withdrawn as the disciplinary authority was of the view that the punishment proposed was inappropriate and taking into account the allegation of corruption and misbehaviour against the applicant, it was felt that the retention of the applicant in the Police force would cause demoralisation to the others. When the allegations against the applicant were fully established during the departmental enquiry, a punishment of dismissal was awarded in consonance with the gravity of the misconduct. The applicant was given all the opportunities for defence and the enquiry was conducted according to the procedure laid down and the enquiry had in no way violated the principles of natural justice and fair play. The respondents further contend that the Enquiry Officer had submitted his report after carefully assessing the facts of the case and concluded that the allegations made against the applicant stood proved beyond any shadow of doubt.

L

It was contended that in the enquiry proceedings it was established that Sub-Inspector Ramesh Kumar never issued any instructions to the applicant, as alleged by the latter. It was established in the enquiry that the applicant had taken the said 5 persons to the Police Station and abused and misbehaved with them and snatched Rs.650/- from Hussain Ahmed, one of the 5 persons and that the Enquiry Officer had properly appraised the evidence and, therefore, based on his finding, the order of dismissal was passed keeping all the proved facts of the case in mind and in accordance with the said principles of law. In view of this, the respondents contend that the allegations of the applicant are not tenable and, therefore, the application deserves to be rejected.

4. The learned counsel for the applicant argued that the respondents' action in revising the show cause notice originally passed ^{was unjustified and it} ~~was~~ modified due to the fact that there was ministerial interference and, therefore, to that extent, it could be said that the action of the respondents had been taken with prejudice. The learned counsel also submitted that the applicant was not given the copy of the complaint. It was also clear that there was no basis in the allegation, as seen from the evidence of PW2 denying the allegation against the applicant to the extent that the purse was taken by the applicant. It was also pointed out that there was a delay of 5 months in the filing of the FIR against the applicant. The learned counsel also contended that non-supply of enquiry document to the applicant in the enquiry vitiated the enquiry proceedings and cited the decision in Committee of Management, Kisan Degree College Vs. Shambhu Saran, 1995(1) SLR page 31. The learned counsel also submitted that the Duty Officer at the Police Station himself stated in the enquiry

that the 5 persons were brought to the Police Station at the oral orders of the Sub-Inspector, Shri Ramesh Kumar and, therefore, the charge that the applicant had brought them to the Police Station and misbehaved with them, could not be taken to have been proved and, therefore, the findings of the Enquiry Officer to that extent was also not correct. The learned counsel also stated that taking into account the entire background of the matter and the action taken by the respondents at the instance of the Hon'ble Minister of Petroleum, it cannot be said that the enquiry was conducted in a fair manner. In the light of this, he contended that the entire disciplinary proceedings have been vitiated and deserves to be held as bad in law. The learned counsel for the respondents argued on the pleadings and reiterated the averments made in the counterreply.

5. We have heard the learned counsel for the parties and have perused the records.

6. We find that the enquiry was held with the due approval of the competent authority and the applicant was also given opportunity of leading the defence witnesses in support of his case. We also find from the proceedings that the applicant has been given adequate opportunity for examining the prosecution witnesses and ^{have also acknowledged the receipt of the enquiry documents on 20.12.89} The applicant had also submitted his detailed written statement which was also duly considered by the Enquiry Officer and also by the disciplinary authority before passing the orders of punishment. Thus, it cannot be said that the disciplinary proceedings were vitiated in any manner as prescribed procedure was followed. There is no substance in the contention of the learned counsel for the applicant that show cause notice was withdrawn and another show cause notice for a higher punishment was issued without following the procedure. The determination of the kind and quantum of punishment proposed, surely falls within the purview of the disciplinary authority, and no violation of ^{procedure is made out} In the

matters relating to the disciplinary enquiry, this Tribunal does not sit as a Court of appeal. It is well settled that when the decision making process is not vitiated in any manner, the correctness of the decision is not to be examined by the Tribunal. As observed by their Lordships in H.B. Gandhi, Excise & Taxation Officer cum Assessing Authority, Karnal & Others VS. M/s Gopi Nath and Sons and Others, 1992 Suppl.(2) SCC 312, "Judicial review is not an appeal from a decision, but a review of the manner in which decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision taken". The findings of the Enquiry Officer cannot also be interfered with unless and until it is seen that the charge is based on no evidence and the finding of the Enquiry Officer is perverse. After going through the evidence of PWs, it cannot be said that there has been no basis at all behind the charges. It was seen from the statement of PW-3 that despite the fact that there was no complaint against the 5 persons, they were brought to the Police Station by the beat Constables, namely, the applicant and one another Constable Prem Singh. PW-3 was also cross-examined by the applicant and from the reply, it is seen that the allegation of the applicant that it was at the instance of Ramesh Kumar, SubInspector that the applicant had brought the 5 persons to the Police Station, has not been established. Secondly, in the cross-examination of PW-4 Hussain Ahmed one of the 5 persons, the witness stated "it is correct that you threw away the purse after taking from his hand". PW5 also corroborated the fact that he saw the applicant

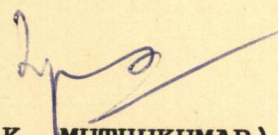
h

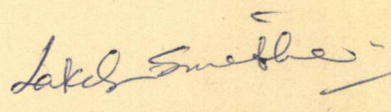
throwing the purse. From this, it cannot be said that there was no basis for the charge. No ostensible purpose was shown why the 5 persons were dragged to the Police Station in the first place. The fact remains that the 5 persons were dragged to the Police Station without any charge. Even while interrogating them before bringing them to the Police Station, it is not clear why the applicant should have snatched the purse from one of the 5 persons when he was pleading that they were outsiders and had come to Rajindra Palace for their own private work. From the enquiry proceedings it is also seen that after bringing them to the Police Station, it was found that there was no charge against the 5 persons and they were afterwards asked to leave the Police Station. The contention of the learned counsel for the applicant that there had been ministerial interference and influence, is not tenable. Just because the complaint was referred to the Commissioner of Police by the Minister's office, it cannot be concluded that official and Ministerial pressure was brought upon the respondents. Further, it is evident that the applicant was having the sten gun in his hands and as per the statement of PW-4, had threatened these persons and when the PW-3 pleaded for his release and tried to show identity papers from the purse, the applicant took the purse from his hand and threw it away. The crossexamination of this witness by the applicant did not yield any contrary facts. The applicant's contention that there was nothing to suggest that he had taken money from the purse, does not absolve him fully as the fact remains that he snatched the purse. In the light of this, we are unable to conclude that the charge is absolutely

h

baseless and the Enquiry Officer's ^{findings} are perverse. Even if there is some evidence, it will not be appropriate for the Tribunal to reappraise the evidence and come to its own finding. In this, we are fortified by the decision of the Apex Court in Government of Tamil Nadu Vs. A. Raja Pandian, AIR 1995 SC 561.

8. In the light of the above discussions, we find that the application lacks merit and is dismissed. No costs.


(K. MUTHUKUMAR)
MEMBER (A)


(LAKSHMI SWAMINATHAN)
MEMBER (J)

RKS