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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No. 587/91

New Delhi : ^{Sept.} ~~22~~, 1995.

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

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

Babu Ram,
s/o Sh.Jagjit Singh,
r/o 1/3567, Tyagi Colony, Ram Nagar,

Shahdra,
Delhi-32

.....Applicant.

By Advocate Shri A.S.Grewal.

Versus

1. Lt.Governor of Delhi, through

Chief Secretary,
Delhi Administration,
Delhi.

2. Commissioner of Police Delhi,
MSO Building, Police Headquarters,
IP Estate, New Delhi.

3. Additional Commissioner of Police,
New Delhi Range,
Delhi Police Headquarters,
MSO Building, I.P.Estate, New Delhi.

4. Deputy Commissioner of Police,
North-East District, Delhi, Vishwas
Nagar, Shahdra,
Delhi

.....Respondents.

By Advocate Shri Arun Bhardwaj.

JUDGMENT

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

In this application, Shri Babu Ram, ASI Delhi Police has impugned the order dated 18.4.90 (Annexure-D) reducing him to his substantive rank of Head Constable ¹ of the same scale of pay which he was drawing before his promotion as ASI and the appellate authority's order dated 18.1.91 (Annexure-E) modifying the punishment to one of reduction in pay by three stages from Rs.1410/- to

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1320/- p.m. in the time scale of pay for a period of three years w.e.f. 18.4.90, with a further direction that the applicant would not earn increment of pay during the period of reduction and on expiry of this period, the reduction would not have effect of postponing his future increment of pay.

2. The applicant's case is that while posted in East District, now North East District at P.S. Trilokpuri, Delhi, he was entrusted a copy of DD No. 7-A dated 21/22.10.87 P.S. Trilokpuri for necessary action. He made necessary enquiries into it and took suitable action as per law and also produced the parties before the SHO. The facts were brought to the notice of SHO but even then a departmental enquiry was initiated against the applicant vide order dated 18.1.88; summary of allegations was served upon him and also a charge sheet; and inspite of proving his innocence, the Enquiry Officer held him guilty and the impugned punishment was imposed.

3. The respondents in their reply have denied the allegations ⁱⁿ of the O.A. and state that on 21.10.87, a copy of D.D.No.7-A dated 21/22.10.87 P.S. Trilokpuri, lodged by one Onkar Singh, was entrusted to ASI Babu Ram applicant for necessary action, in which it was alleged that although Onkar Singh was ^{the} owner of plot No.B-88, Pandav Nagar, some persons were obstructing him in regard to construction on the plot. The respondents state that the applicant called both the parties, ^{but} without going into the details of the ownership of the said plot, allowed Onkar Singh to take possession of the land and restrained the other party.

On 23.10.87, ^{the} actual owner of the plot, Shri Idrish Qureshi, a resident of U.P., visited the plot and found that Onkar Singh was making efforts to grab his land. ^{the} Inspite of ^{the} insistence of the SHO P.S. Trilokpuri, the applicant was found reluctant to take any action against Onkar Singh, and only took preventive action and arrested Onkar Singh under Secs. 107/151 Cr.P.C., although Idrish Quresh received injuries which was a cognizable offence which speaks of his malafide intention and ulterior motive. The respondents further state that on 23.10.87 another complaint of ^{one} Smt. Sundra Saxena, r/o 6343, Netaji Gali, Gandhi Nagar recorded vide Dy. No. S. 184 P.S. Trilokpuri, was marked to the applicant for enquiry and report but instead of making enquiries, the applicant intimated ^{to} the SHO that one Mangat Ram was the owner of Plot No. 141, Ganesh Nagar Complex. The applicant is alleged to have told both Mangat Ram and Mrs. Saxena that they have got the general power of attorney for the same plot and, therefore both claimed possession over it, and as such action under sec. 107/151 Cr.P.C. was initiated against both parties on 7.11.87 and a separate action under section 145 Cr.P.C. was also initiated on 7.11.87. On 30.11.87 Mrs. Saxena visited the police station and produced the papers regarding ownership of the land and further informed that Mangat Ram and others ^{upon which a} have forged documents of that land, ^{and further} the matter was ^{1 further} enquired ^{into} by S.I. Gurdip Singh, P.S. Trilokpuri and it was found that the papers produced by Shri Mangat Ram were forged while those of Mrs. Saxena were genuine. A Criminal case was instituted against Mangat Ram. The respondents allege that the

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applicant failed to take proper action against Mangat Ram and misguided the SHO by not disclosing the real facts of the case with ulterior motive.

4. A departmental enquiry was accordingly initiated against the applicant vide order dated 18.1.88 (Annexure-A). The summary of allegations dated 24.2.88 (Annexure-B) and the charge-sheet (Annexure-C) were served on the applicant and the Enquiry Officer submitted his findings on 9.6.89 holding the applicant guilty of the charges levelled against him. Tentatively agreeing with the findings of the Enquiry Officer, a show cause notice proposing the punishment of dismissal of applicant from service was issued to the applicant on 21.9.89, to which the applicant submitted his reply on 6.10.89. The Enquiry Officer, after going through the reply and relevant records held that the applicant had conducted certain enquiries, but for unexplainable reasons had failed to take appropriate action in those cases. However, taking a lenient view in the matter he ordered reduction in rank of the applicant to his substantive post of the same pay scale which he was drawing before his promotion as ASI.

5. In appeal, the appellate authority accepted the applicant's plea that in so far as Charge No.1 was concerned, there was no malafide intention or ulterior motive on his part regarding the land dispute between Onkar Singh and Idrish Qureshi, and the appellate Authority had held that the action taken by the applicant in so far as Charge I was concerned, was just as per circumstances of the case.

6. We are, therefore, left with Charge II, wherein the appellate authority had held that the applicant's contention that there was no malafide

on his part in dealing with Smt. Sundra Saxena's complaint in respect of disputed plot No. 141, Ganesh Nagar Complex, Delhi, had no force. The appellate authority had held that Smt. Saxena's complaint was found to be genuine and a criminal case was instituted on 30.11.87 in respect of this plot. The appellate authority had also held that the applicant was responsible for not taking proper action on Smt. Saxena's complaint and his conduct in that case was not above board. However, as the applicant was not heard in person by the punishing authority before imposing the major punishment of reduction in rank, and the specified period of reduction in rank was not mentioned in the order, the order of reduction in rank was modified to one of reduction in pay of the applicant by three stages, during which period the applicant ~~would~~ not earn increment of pay, and on expiry of three years, the reduction ^{would} not have the effect of postponing his future increments.

7. We have heard Shri A.S. Grewal for the applicant and Shri Arun Bhardwaj for the respondents. We have also perused the materials on record including the findings of the Enquiry Officer. The Enquiry Officer had concluded that when Smt. Sundra Saxena had complained of illegal occupation of her plot by Mangat Ram on the basis of forged documents, the applicant took action against the applicant under Sections 107/151 Cr.P.C. and remained silent on the issue of ownership, status of the documents and alleged trespass into the property of Mrs. Saxena, which is culpable because on 30.11.87 on a similar complaint of Mrs. Saxena S.I. Gurdip Singh of P.S.

Trilokpuri registered a criminal case under relevant sections of the Indian Penal Code against the accused and arrested them.

8. The applicant has taken the defence that there were no complaints against him by any of the parties to dispute, who were fully satisfied with the enquiry conducted by him, and in fact there was a complaint against the SHO, who to save his own skin, sent a report against him to the senior officers. The applicant asserted that he took appropriate action against both parties and never acted with malafide intention or ulterior motive. He has pointed out that on Mrs. Sundra Saxena's complaint, proceedings under sec. 145 Cr.P.C. were initiated against Mangat Ram which have now been decided in his favour which indicated that he in fact was in possession of the plot and the enquiry made by the applicant was quite in order. Hence there was no question of instituting any criminal case against Mangat Ram and in fact, as the proceedings under sec. 145 Cr.P.C. were decided in favour of Mangat Ram, it was apparent that he was rightly in possession ^{of the plot, criminal had been} and the case was falsely registered against him. The applicant has also alleged that the Enquiry Officer did not conduct the enquiry in a proper manner, inasmuch as he cross-examined the ^{prosecution} witnesses and acted as a Prosecutor also. It has also been asserted that the punishment order was excessive.

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9. We have consider the rival contentions carefully. As mentioned above, out of the two charges, the Appellate Authority has exonerated the applicant of one charge, and the only charge that survives is ~~the~~ ^{one} ~~that~~ in respect of the complaint of Smt. Sundra Saxena, r/o 6343, Netaji Gali, Gandhi Nagar, marked to the applicant for enquiry and report. The applicant informed the SHO that one Mangat Ram, s/o Sri Chet Ram, r/o D-61, Gali No.4 Laxmi Nagar, Delhi was in possession of plot No.141, Ganesh Nagar Complex and instead of taking proper action and verifying the facts, the applicant prepared Kalandar ¹ under secs. 107/151 Cr.P.C. in the Court of SDM, Shahdra and under Sec. 145 Cr.P.C. in the Court of SDM, Shahdra. What proper action the applicant failed to take, has not been specified in the charge, but in the order of the Disciplinary Authority as well as the Appellate Authority it is stated that when the matter was specifically enquired into by S.I. Gurdip Singh of Trilokpuri, it transpired that Mangat Ram's claim of possession over the disputed land was based on forged documents while Smt. Sundra Saxena's claim was genuine and therefore a case bearing FIR ^{1 No:} 357 dated 30.12.87 under sections 420/448/471/468 IPC was got registered at P.S. Trilokpuri, and the applicant had failed to take proper action against Mangat Ram, and misguided the SHO by not disclosing the facts, with ulterior motive.

10. If that indeed were so, the respondents have not explained how the SDM, Shahdra by his order dated 4 - 10-89 (a photostat copy of which was furnished by the applicant and was taken on record) in the 145 Cr.P.C. proceedings with respect to the disputed plot, had accepted the police report that Mangat Ram was in possession of the land, ^{as well as} Mangat

Ram's statement made before him (SDM) that he in turn had sold the land to another party, as a result of which the SDM dropped the 145 Cr. P.C. proceedings. In view of this order of the SDM, which appears to have become final in the absence of any appeal filed against it, the question of the applicant's failure to take proper action against Mangat Ram and his associates, or to have attempted to misguide the SHO with ulterior motive, falls to the ground.

11. We are aware that the Tribunal is not a court of appeal and should not interfere with the findings of the competent authorities in departmental proceedings, unless those findings are based on no evidence, or are arbitrary, malafide, or perverse. In the present case, when the SDM, Shahdra had accepted the report sent by the applicant, finding Mangat Ram in possession of the disputed land and that order became final, the charge against the applicant that he failed to take proper action against Mangat Ram, on the ground that his claim of possession over the disputed land was based on forged documents, and by not instituting a case against Mangat Ram under the relevant sections of the IPC, the applicant acted with ulterior motives, cannot be said to be based upon cogent evidence and to that extent is arbitrary.

12. In the result, in the absence of any evidence against the applicant to support the charge, this O.A. is allowed, and the impugned

order dated 18.1.91 is quashed and set aside.

The reduction in the applicant's pay communicated in the said order is directed to be restored with arrears, with other consequential benefits. These directions should be implemented forthwith.

13. We may mention here that during hearing Shri Grewal stated at the bar that the criminal case arising out of FIR 357 dated 30.12.87 was still pending and this assertion was not denied by the respondents. We, therefore, proceed on the basis that the criminal case is still pending, and make it clear that in the event that upon the conclusion of that criminal case, it is found that Mangat Ram had in fact based his claim for possession over the disputed land on forged documents, and the conduct of the applicant comes to adverse notice in that case, nothing contained in this judgment will operate as a bar to the respondents taking such action against the applicant as they deem appropriate in accordance with law. No costs.

Lakshmi Swaminathan

(LAKSHMI SWAMINATHAN)
Member (J)

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(S.R. ADIGE)
Member (A)

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