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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

New Delhi

O.A.No 968 of 1991

T.A. No.

Date of Decision: 11-9-95

Shri Khairati Lal Applicant


Shri Shanker Raju Advocate for the Applicant

Versus

U.O.I. & Others Respondent

Shri Amresh Mathur Advocate for the Respondent(s)

1. Whether Reporters of local papers may be allowed to see the judgement? *no*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*


(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. '968 of 1991

New Delhi this the 11th day of July, 1995

Mr. A. V. Haridasan, Vice-Chairman
Mr. K. Muthukumar, Member (A)

Shri Khairati Lal
S/o Shri Kehar Singh,

R/o Quarter No.381 'A',
Police Colony,
Malviya Nagar,
New Delhi.

..Applicant

By Advocate Shri Shanker Raju

Versus

1. Commissioner of Police, Delhi,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. Additional Commissioner of Police,
Southern Range,
New Delhi,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
South District,
Hauz Khas,
New Delhi.

..Respondents

By Advocate Shri Amresh Mathur

ORDER

Mr. K. Muthukumar, Member (A)

The applicant, an Ex-Assistant Sub Inspector of Delhi Police has filed this application under Section 19 of the Administrative Tribunals Act, 1985. In this application, he has assailed the order of dismissal from service passed by the respondent No.3 and also the appellate order passed by respondent No.2 rejecting his appeal against the aforesaid dismissal order. Briefly stated, the facts are as follows:

The applicant while working as ASI was departmentally proceeded against under Section 21 of the Delhi Police Act, 1978. It is stated that on night of 28.09.1989 at 11.00 P.M. one Shri Sanjeev Kumar Jain resident of H.S. 13/3 Kailash Colony, New Delhi, lodged the complaint to the PCR that his landlord

Shri H.L. Kapoor, resident of 7/38 Ansari Road, Darya Ganj, New Delhi quarrelled with him and forcibly took possession of the shop at Kailash Colony after removing his locks. It is stated that the wife of Shri Sanjeev Kumar Jain was a tenant there and was running a beauty parlour (shop). The applicant was entrusted with the said call by the duty officer of the Greater Kailash Police Station. It is alleged that the applicant did not take any legal action against the landlord for reasons best known to him. Thereafter, on the next day, when the complainant pursued the matter with the Commissioner of Police, another Inspector Shri S.K. Tomar, SHO, Greater Kailash visited the site and registered a case against the landlord Shri H.L. Kapoor under Sections 448/506/427/380 of the Indian Penal Code. Thereafter, the investigation was entrusted to another ASI, Shri Shyam Lal. It is stated on the arrest of the landlord, Shri H.L. Kapoor, Shri Kapoor disclosed that he had given Rs.5,000/- to the applicant on the night of 28.09.1989 for taking his favour in the case. For this misconduct and dereliction of duty, the applicant was proceeded against for departmental action punishable under Section 21 of the Delhi Police Act, 1978 and was placed under suspension and with the prior approval of the Additional Commissioner of Police, New Delhi regular departmental enquiry was ordered. On the basis of the findings of the enquiry officer in the departmental enquiry proceedings, the applicant was held guilty of the charge and after considering his representation which was rejected, the applicant was dismissed from service with effect from 11.09.1980 and his appeal was also rejected by

the appellate authority.

2. The applicant has prayed for quashing the impugned order of dismissal and also the appellate order rejecting his appeal on the following grounds:-

(i) The Station House Officer ignored the report filed by him in the Daily Dairy on his visit to the site on the night of September 28, 1989 in which he had stated that both the parties in the dispute agreed to maintain law and order and the complainant did not make any statement that his wife, namely, the tenant was forcibly dispossessed from the tenanted premises and that there was no case for the applicant to register under any appropriate section of the law and, therefore, it is not known how the SHO relied on another statement of the husband of the tenant, namely, the complainant who seemed to have resiled from his earlier written statement and given another statement to the SHO, which was duly taken note of and got registered and a FIR was filed against the landlord.

(ii) The SHO also had extracted a disclosure statement from the landlord which could not have been the basis for initiating departmental action against him as the landlord from whom such a statement was obtained was accused in the case registered against him. Further in the absence of any written complaint by the complainant, the departmental proceedings against him were totally unjustified and the punishment of dismissal was also liable to be quashed.

(iii) The applicant further alleges that no independent prosecution witness was ever examined by the enquiry officer to support the prosecution version and all that the prosecution witness, namely, Shri H.L. Kapoor, the landlord stated in examination in chief was that the matter regarding the tenancy was subjudice and he reserved his right to appeal in the court. He had

also denied that he had given any money to the applicant. The Enquiry Officer had put the suggestion to Shri Kapoor on his having given the money to the applicant and this was totally incorrect. The prosecution witness (PW-7), namely, Shri H.L. Kapoor made a different statement during the preliminary enquiry conducted by him but, however, gave a written statement under pressure. There was, however, no eye witness to the fact of his having accepted any money from the landlord and the statements of all the prosecution witnesses were of preliminary nature and as none of them was an eye witness. The Enquiry Officer has also cross-examined the witnesses beyond his authority.

(iv) The Enquiry Officer was also biased. In that he has examined additional witnesses on behalf of the prosecution and not the court witness to clarify any point. The disciplinary authority did not apply his mind to the facts of the case and awarded the punishment without appraisal of any evidence.

(v) Copies of the relevant documents were also not supplied to the applicant.

The respondents have strongly resisted the contention of the applicant and have stated that on arrest of Shri H.L. Kapoor, the landlord, he disclosed by a written statement before the SHO, Greater Kailash that he had given Rs.5,000/- to the applicant to favour him in stating about the compromise with the applicant, and statement was recorded by SI Sidharath Pareek in the presence of SHO, Greater Kailash. The applicant did not take any legal action against the landlord which was required to be taken and he had also recorded a

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wrong report in the Daily Diary Register that the dispute was already in the Civil Court. The applicant was required to take legal action against the landlord when a culpable offence was committed and, therefore, it was very clear from the statement of the complainant that when he could not restore the possession even on 28.09.1989, the SHO visited the site again on the next day and registered a case against the landlord. In view of this, there had been a failure of duty on the part of the applicant in not taking proper legal action against the landlord. The respondents have also denied all other averments of the applicant and have stated that the departmental enquiry was conducted as per the procedure laid down and as many as 7 prosecution witnesses were examined and the applicant also had the opportunity to examine the witnesses. The defence witnesses were also examined and the applicant was also shown the relevant record during the enquiry. It was clear that the complainant PW-4 had categorically stated in the enquiry that the applicant reached the site at 9.00 P.M. but could not help to restore the shop which was forcibly taken by the landlord H.L. Kapoor. The respondents had also denied the plea of the applicant that the enquiry officer was biased. They had also averred that the applicant was given all the opportunity to defend himself through the whole proceedings and that there was no basis or allegation that the SHO had only implicated the applicant in this case. The disciplinary authority had applied his mind taking into account all the facts and circumstances of the case and the findings of the enquiry officer.

3. We have gone through the pleadings and also heard the learned counsel for the parties.

4. The learned counsel for the applicant placed

before us the following arguments:

He pointed out that the enquiry was vitiated as the respondents have made use of the previously recorded statement in the preliminary enquiry which was specifically prohibited under Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, 1980. We have considered this contention. Sub-rule (3) of Rule 15 reads as follows:-

"The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer".

In the instant case, the respondents have brought on record the written statement dated 29.09.89 by Shri H.L. Kapoor during the preliminary enquiry. Shri H.L. Kapoor has also been included as a witness and in fact, appeared as a witness of prosecution witness PW-7 and was also examined in the departmental enquiry. Since the witness was actually available during the preliminary enquiry, written statement obtained during the preliminary enquiry cannot be relied upon in the departmental enquiry and to this extent, we are of the considered view that the enquiry has been vitiated and is not in accordance with the provisions of aforesaid sub-rule (3) of Rule 15.

In the departmental enquiry, the aforesaid witness denied having paid any money to the applicant during the examination by the Enquiry Officer as well as during the cross-examination by the applicant. There is no other eye witness to the alleged payment of Rs.5,000/- to the applicant by Shri H.L. Kapoor. The disciplinary authority observed as follows:-

" Although there is no eye-witness on the transaction of money and Shri H.L. Kapoor appears to have been won over by the defaulter ASI yet it has emphatically been proved that the ASI did not take legal action against Shri H.L. Kapoor thereby favouring him with some ulterior motive and the possibility of accepting Rs.5,000/- as illegal gratification cannot be ruled out".

Taking into account the fact that there is no eye-witness to the payment and the written statement given by Shri H.L. Kapoor during the preliminary enquiry, cannot be admitted as he himself has appeared as a witness and denied the payment, the finding of the disciplinary authority that the witness had been won over by the defaulter ASI and the possibility of accepting the illegal gratification cannot be ruled out, is not based on any sound reasoning but is merely based on suspicion and, therefore, to this extent, the finding has to be held to be perverse. The learned counsel for the applicant then referred to the Daily Dairy exhibit-22A, which is a daily sheet recorded by the applicant on 28.09.1989 wherein, the applicant had recorded about the compromise reached between the parties.

The learned counsel for the applicant stated that this has not been challenged in the enquiry. We find that there is some force in this argument. The Exhibit-22A is a record of a daily diary recorded by the applicant on the day, i.e., 28.09.1989 on his return from the investigation into the complaint and this shows that there had been a compromise among the parties and both of them had signed this compromise and there was no cognizable offence. This was produced during the enquiry and the Enquiry Officer had not made any observation or examined this matter and, therefore, the averment in the daily diary had remained uncontroverted. The Enquiry Officer had recorded in his finding that the defence witnesses had stated that the locks of the disputed shop were in tact. However, he only relied on the statement of the complainant Sanjeev Kumar, PW-4 and had stated that the statements of all the defence witnesses are not believable. This finding is, however, not based on any reasoning. From the cross-examination of PW-4 it is admitted by the PW-4 himself that there was no quarrel on 28.09.89 (night) with Shri H.L. Kapoor and that no articles belonging to Shri H.L. Kapoor had been kept inside the shop and both the parties went to the Police Station in the night and nothing was finalised. It would thus appear that there was no direct evidence for the applicant to come to the conclusion that there was a cognizable offence which was committed on the night of 28.09.1989. It is a different matter that on the next day, FIR was registered against Shri H.L. Kapoor on the basis of complaint of Shri S.K. Jain on that day. Therefore, the finding of the Enquiry Officer that the charge has been fully

proved beyond doubt, is based on no evidence at all and is perverse. During the hearing, the learned counsel for the applicant also produced before us the order of the Additional Sessions Judge in the criminal case filed on the basis of the FIR filed by the respondents against Shri H.L. Kapoor. The Learned Judge had held that the charge made out against Shri H.L. Kapoor that he had taken forceful possession of the shop in question was totally groundless and had set aside the order of the Trial Court and discharged the petitioner.

5. The learned counsel then referred to the Rules 8 and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 and argued that the punishment and dismissal could be awarded only for the acts of grave misconduct and in the instant case merely on the suspicion of receipt of money from the landlord and also on failure to perform certain duties, which was not established, the punishment of dismissal was in fact very harsh and was not in accordance with the spirit behind the aforesaid rules.

6. We have considered all the aspects of the case. We find that the decision making process is vitiated in as much as the provisions of Rule 15(3) have been clearly violated. Secondly, the finding of the Enquiry Officer cannot be said to be based on sound reasoning and is perverse as pointed out above and, therefore, the charge cannot be sustained. Although the Tribunals or Courts are not required to reappraise the evidence in a departmental enquiry, there is scope for interference

when it is evident that the findings in the inquiry are without any sound reasoning and are perverse affecting the decision making process.

7. In the result, the application is allowed and the impugned order of the disciplinary authority and the order of the appellate authority thereon are set aside. The respondents are directed to reinstate the applicant forthwith and the applicant will be entitled to all the consequential benefits including arrears of pay and allowances and increments in the post he was holding before his dismissal, from the date of dismissal to the date of reinstatement.

There will be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(A.V. HARIDASAN)
VICE CHAIRMAN(J)

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