

17

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2154/2004

New Delhi this the 5th day of January, 2006

Hon'ble Mr. V.K.Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

Insp. Sher Singh No.D-1/893,
S/O Late Shri D.S. Ramela,
R/O B-201, Krishna Kunj Apptt.,
Nasirpur Road,
Dwarka Phase-1,
New Delhi.

..Applicant
(By Advocate Shri Raj Singh)

VERSUS

1. Lieutenant Governor,
Delhi
Through its Principal Secretary,
Raj Niwas, Delhi.
2. The Commissioner of Police
Delhi Police Headquarters,
I.P.Estate, New Delhi.
3. The Joint Commissioner of Police
Operations, Delhi Police Headquarters,
I.P.Estate,
New Delhi.

..Respondents
(By Advocate Mrs. Renu George)

O R D E R

(Hon'ble Mrs. Meera Chhibber, Member (J))

By this OA, applicant has sought the following reliefs:

- (a) That the impugned order (s) No. 10431-446/P.cell (vig) P-V dated 24.5.2002 passed by respondent No.3 being disciplinary authority (Annexure A-1), and order No. 34966-67/CR/I/PHQ dated 4.8.2003 passed by respondent No.2 (Annexure A-2), being appellate authority be declared illegal, unlawful and unjustified and in violation of the rules and consequently be quashed/set aside.



(b) That Rule 8 (d) of Delhi Police (Punishment and Appeal) Rules, 1980 be declared ultra virus S.21 of Delhi Police Act, 1980".

However, at the time of arguments he restricted his arguments for challenging the summary of allegation, findings and the orders passed by the disciplinary authority and the appellate authority. No argument was made with regard to second prayer made in the OA. Therefore, we shall be restricting ourselves to the arguments advanced in the court.

2. It is submitted by the applicant that an enquiry was initiated against him and SI Anil Berwal vide order dated 19.4.2001 by the Joint Commissioner of Police (on the basis of some strictures passed by the Sessions Court against the Investigation Officer) which is in violation of Rule 13 of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as "the Rules, 1980") because if any strictures are made, power is given to Deputy Commissioner of Police to decide whether any further investigation into the matter is necessary or not, whereas in this case Joint Commissioner of Police had ordered to initiate an enquiry. Therefore, the order dated 19.4.2001 itself is bad in law and is liable to be quashed. He further submitted that the order of punishment passed by the disciplinary authority is in violation of Rule 16(xii) of the Delhi Police (Punishment & Appeal) Rules 1980 as applicant was not informed about the proposed punishment which was intended to be passed against him. Moreover, no independent finding has been recorded by the disciplinary authority which is necessary as per Rule 16 (x) of the Rules, 1980 .

3. He further submitted that the punishment order has been passed in a mechanical manner without application of mind because even though the charge against the applicant was that he did not supervise the investigation properly whereas in the finding submitted by the Enquiry Officer it has been held that applicant submitted a contradicting report than the post

mortem report. He also submitted that even the ACP and Deputy Commissioner of Police had visited the scene and as per their opinion also, it was a case of suicide and therefore, applicant alone could not have been punished leaving the senior officers as well as the Investigating Officer SI Shri Anil Birwal as it amounts to discrimination. He further submitted that the findings recorded by the Enquiry Officer are absolutely perverse because Dr. K.L.Sharma himself stated in his cross examination that he had not given any opinion as to whether this was a case of explicit homicide or evident act of suicide. On the contrary, he stated that simple slip knot in ligature handing is diagnostic of suicide. Counsel for applicant thus submitted that since there was no evidence available to suggest that it could be a case of murder and all the evidence suggested it to be a case of suicide, therefore, the punishment awarded to him is without any basis, therefore, the same needs to be quashed and set aside.

4. OA is opposed by the respondents who have submitted that applicant has been dealt with departmentally on the basis of serious strictures passed by the Hon'ble learned Additional Sessions Judge, Shri A.K.Garg, in the case which was filed by applicant who was the then SHO. Since the charge was found to be proved in the enquiry, the disciplinary authority has rightly passed the punishment order which has been upheld by the appellate authority after dealing with the points raised by applicant. Therefore, this OA warrants no interference. Counsel for respondents submitted that as per Rule 16 (xii) (c) it is no longer required to give proposed punishment, in the notice to the delinquent before imposing the punishment, on the point of departmental enquiry having been initiated by the Joint Commissioner



of Police. It is submitted by the counsel for respondents that under Rule 13

(3) even though it is stated that in cases where serious charges arise from strictures made by criminal courts, the concerned Deputy Commissioner of Police shall initiate necessary disciplinary action against the police officer against whom strictures have been made. But in case such proceedings are initiated against an Inspector of Police, information shall be sent to the Additional Commissioner of Police concerned, meaning thereby that the Additional Commissioner of Police had to be informed about the initiation of the enquiry. If enquiry has been initiated by the Joint Commissioner of Police, no prejudice can be said to have been caused to applicant because the object of initiation of enquiry is to afford an opportunity to the person concerned to defend himself against the charges levelled against him. She relied on the theory of prejudice as discussed in the judgment given by Hon'ble Supreme Court in the case of Managing Director, ECIL Vs. B.Karunakar and Ors reported in JT 1993(6) SC 1). As far as the charges are concerned, she submitted that since serious strictures were passed by the learned Additional Sessions Judge himself, nothing more need to be stated and since case was challenged by the applicant in his capacity as SHO, he was fully responsible for the over all supervision in the investigation for not adding correct Section in the challan or the charge sheet. She also submitted that though the senior officers had visited the scene of occurrence but the applicant cannot get absolved of his responsibility and, therefore, no interference is called for in the OA. The same may be dismissed.

5. We have heard both the counsel and perused the pleadings as well. Admittedly, enquiry in this case has been initiated against the applicant by

S

the Joint Commissioner of Police on the basis of strictures passed by the learned Additional Sessions Judge, Shri A.K.Garg, by observing that Inspector did not supervise/investigate the case properly which was defective and it was not conducted in a proper manner, as a result of which accused person was discharged by the Hon'ble Additional Sessions Judge. The allegation made against the applicant in the summary of allegation is that as per the post mortem report, it was a case of homicidal and a murder case was made out. But in spite of it, the case was not registered U/S 302 IPC instead challan U/S 306 IPC was filed in a routine manner which was subsequently amended by adding Section 304 B IPC. The enquiry Officer after examining number of prosecution and defence witnesses as well as Court Witnesses ultimately gave his finding holding that Shri Sher Singh, the then SHO, Nangloi and SI Anil Berwal are responsible for submitting contradictory report in the case. They should have obtained legal opinion in case of contradiction. On the basis of the finding given by the Enquiry Officer, the disciplinary authority passed an order dated 24.5.2002 whereby SI Anil Berwal was exonerated holding that he had only less than one year service. But as far as applicant is concerned, he was awarded punishment of forfeiture of three years approved service permanently by entailing proportionate reduction in his pay (pages 12 and 14). Being aggrieved, applicant filed his appeal which was rejected by the Commissioner of Police vide order dated 4.8.2003. It is in these circumstances that applicant has approached the Tribunal.

6. As far as the contention of applicant's counsel that the proceedings are vitiated in view of violation of Rule 13 of the Rules is concerned, we



find no merit in the submission because in any case even though the Deputy Commissioner of Police, was to initiate the enquiry against an Inspector, information was required to be given to the Additional Commissioner of Police concerned. If the enquiry was initiated in place of Deputy Commissioner of Police by the Joint Commissioner of Police, it would not have caused any prejudice to the applicant because ultimately mere initiation of enquiry does not entail punishment unless the charge against the delinquent is proved in the enquiry where he is given full opportunity to defend himself. Therefore, merely, because enquiry was initiated by the Joint Commissioner of Police in place of Deputy Commissioner of Police it cannot be said that the entire proceedings get vitiated. Moreover what Deputy Commissioner of Police could do, could always be done by the higher authority i.e. Joint Commissioner of Police, therefore, this contention is rejected.

7. Similarly, second ground regarding violation of Rule 16 (xii) of the rules as submitted by the counsel for applicant, for not informing the applicant about the proposed punishment, has also to be rejected, as it is totally misconceived. Rule 16(xii) of Delhi Police (Punishment & Appeal) Rules, 1980 for ready reference reads as under:

“(xii) If the disciplinary authority, having regard to his findings on the charges, is of the opinion that a major punishment is to be awarded, he shall-

(a) furnish to the accused officer free of charge a copy of the report of the Enquiry Officer, together with brief reasons for disagreement, if any, with the finding of the Enquiry Officer.

(b) Where the disciplinary authority is himself the Enquiry Officer, a statement of his own findings, and

(c) If the disciplinary authority, having regard to its finding on all or any of the charges and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in rule 5(i to vii) should be imposed on the Police Officer, it shall make an order imposing such penalty and it shall not be necessary to give the Police Officer any opportunity of making representation on the penalty proposed to be imposed".

Perusal of rule 16(xii) (c) makes it abundantly clear that if disciplinary authority decides to impose any of the penalties specified in rule 5 (i to vii) it shall not be necessary to give the Police Officer any opportunity of making representation on the penalties proposed to be imposed. Therefore, this contention is also rejected.

8. Coming to the merits of the case, we find some force in the submissions made by the counsel for applicant. We have gone through the entire records and find that the whole charge against the applicant in the enquiry was that he had given report which was contradictory to the post mortem report because in the post mortem report, it has indicated that this was a case of homicidal and a murder case, whereas the case was not registered under Section 302 IPC. However, from the detailed report submitted by the enquiry officer, it is seen that Shri S.K.Khanna PW-3 had clearly stated, a Committee was constituted in which he was nominated as Chairman and his two other colleagues namely, Dr.K.K.Banerjee and Dr. R.K.Sharma were members but he neither visited the scene of crime nor examined the dead body physically. After giving various possibilities, he clearly stated that it cannot be said in this case whether death was homicidal or suicidal. As far as Dr. K.L.Sharma, Sr.Chief Medical Officer and head of the Department of Forensic Medicine, Subzi Mandi is concerned, he had conducted the post mortem and gave his report but even he stated on cross

S

examination, that he had not given any opinion expressly as to whether this is the case of explicit homicide or evident act of suicide. On the contrary he specifically stated that simple slip knot in ligature handing is diagnostic of suicide. Not only this, during cross examination, even SDM stated yes to the question whether the deceased had committed suicide. Even Shri Rajesh Kumar, ACP Punjabi Bagh deposed that he had inspected the scene of crime and enquired from the neighbours who revealed that the door of the room was bolted from inside and the neighbours had broken open the same. There was no window and out let in the room. The husband and the landlord were not present at that time. The same was reiterated by ACP (Retd.) Tilak Nagar that the daughter of the landlord had told the ladies that the door was closed from inside and was broken open by the persons who gathered over there. Apart from it, the enquiry officer himself has stated before conclusion that most of the pleas raised by applicant are admissible being matter of record which shows that out of 40 pleas raised by the applicant, only 5 to 11 were not admissible but rest were found to be accepted in law. Moreover, admittedly, ACP and even DCP had opined this to be a case of suicide on the basis of evidence which had come forward, when they visited the scene of occurrence. All these facts, as mentioned above collectively, show that there is no material evidence on record to show that applicant had given report which was contradictory to the post mortem report as suggested in the summary of allegation. In fact as stated above, Dr. K.L. Sharma, who conducted the post mortem report, himself stated that no opinion was expressed in the report whether this was a case of explicit homicide or evident act of suicide and he rather stated that simple slip knot in ligature

R

hanging is diagnostic of suicide. In these circumstances it is not understood how the authorities have come to the conclusion that the charge sheet filed by the applicant was contradictory to the post mortem report.

9. It seems the enquiry officer, as well as, the disciplinary authority and appellate authority were carried by strictures passed by the learned Additional Sessions Judge and they have imposed punishment simply on the basis of those strictures. However, the position in law is quite different. If the person could be punished on the basis of strictures alone, there was no need for the authorities to hold an enquiry against the applicant. In fact it would be relevant to quote Rule 13 of Delhi Police (Punishment & Appeal) Rules, which for ready reference reads as under:

“**Strictures by court-** 1. In cases in which strictures are made on the conduct of a police officer by a Sessions Court or by a Metropolitan Magistrate's court but no specific recommendation is made by the court making such strictures that an enquiry should be made, the Deputy Commissioner of Police will decide whether an investigation into the matter is necessary. If he decides that investigation shall be made, the procedure for investigation shall be as laid down in Rule 16 below.

2. When strictures on the conduct of a police officer are made by the High Court and are communicated to the Delhi Administration, the appointing authority shall proceed to take action in accordance with the instructions of the Delhi Administration.

3. In cases where serious charges arise from strictures made by criminal courts, the concerned Deputy Commissioner of Police shall initiate necessary disciplinary action against the police officer against whom strictures have been made. In case such proceedings are initiated against an Inspector of Police, information shall be sent to the Additional Commissioner of Police concerned”.

Rule 13 makes it clear that if any strictures are made by the Session Court without any specific recommendation then it has to be decided by the authority concerned, whether any investigation into the matter is necessary

B

or not. In case it is decided to investigate the matter, further proceedings shall be initiated as laid down under Rule 16 of the Rules which means a person cannot be punished straight way on the basis of strictures passed by the Court, unless the charges are proved against the applicant concerned in the enquiry on the basis of evidence which comes on record. In the enquiry, however, there is no evidence to suggest that applicant had filed a contradictory report, evidence is to the contrary as explained above. Therefore, the findings, according to us, are not based on any evidence.

10. In the instant case, we have noticed that right from the stage of initiation of enquiry all the officers have been carried by the strictures passed by the learned Additional Sessions Judge whereas in an enquiry, punishment can be imposed only if some evidence comes on record during the enquiry. We find even though there is no independent evidence which has come up against the applicant in the enquiry, yet he has been imposed the punishment which is not at all the intent of rule 13. We are satisfied that it cannot be stated on the basis of evidence which has come on record, that applicant had submitted a contradictory charge report then the post mortem report.

11. It is also seen that the Investigation Officer SI Anil Berwal has been totally exonerated of the charge even though he had investigated the case, on the ground that he had less then one year of service and no action has been taken against the ACP and DCP also even though they had similar opinion, that this was a case of suicide. We see no justification why applicant alone should be held guilty of not supervising the investigation properly or



imposed the punishment. From the perusal of order dated 24.5.2002, it is seen that Disciplinary authority has observed that applicant should have used his experience in a more effective way to supervise the investigation by his junior officer and to guide him properly. He has also observed that senior officers who were also involved cannot exonerate him of his faults and the failure of others cannot come to his rescue meaning thereby it is not even disputed that ACP and Addl. DCP visited the scene of crime and they also failed in their duties. If the reasoning of disciplinary authority is to be accepted, then the same will hold good for the ACP and Addl. DCP as well because they had also visited the scene of crime and could have guided the investigating officer and SHO in the right direction which was admittedly not done, therefore, according to us, applicant alone could not have been

punished. specially when shichars were passed against the investigating officer and not against the SHO.

12. Apart from it, the most important aspect is, that even the Doctor, who had conducted the post mortem was not sure in his report, whether this was a case of explicit homicide or evident act of suicide.

13. In view of above discussion, we are of the opinion that the findings given by E.O., punishment imposed on the applicant by the disciplinary authority and the appellate order cannot be sustained. Therefore, the findings, orders passed by the disciplinary authority as well as the appellate authority are quashed and set aside. OA is accordingly allowed. No order as to costs.

8/5/06

(Mrs. Meera Chhibber)
Member (J)

Sk

V.K.Majotra
(V.K.Majotra)
Vice Chairman (A)
4-1-06