

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2317/2004

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New Delhi this the 2nd day of May, 2006.

Hon'ble Mr. Justice M.A. Khan, Vice-Chairman(J)
Hon'ble Mrs. Chitra Chopra, Member(A)

Cons. Jasbir Singh, No.803/SW,
Now 587/SW (PIS No.28881923)
S/o Shri Chander Bhan,
R/o Village Ladpur, P.O. Bamnola,
Police Station Jhajjar,
Haryana

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Applicant

(through Sh. Arvind Singh, Advocate)

Versus

1. Govt. of NCT of Delhi
Through
Joint Commissioner of Police,
Southern Range,
Police Headquarters, I.P.Estate,
New Delhi.
2. Deputy Commissioner of Police,
South West District,
New Delhi.
3. Dy. Commissioner of Police,
South West District,
New Delhi.

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Respondents

(through Sh. Om Prakash, Advocate)

O R D E R

Hon'ble Mrs. Chitra Chopra, Member(A)

In the present OA, the applicant Constable Jasbir Singh has sought the following reliefs:

"(a) to vitiate the whole D.E. proceedings, findings of respondent No.3 and to set aside the impugned orders and appellate order dated 28.01.2004 and order dated 30.07.2004 respectively;

(b) to treat the suspension period as spent on duty;

(c) to direct the respondents to treat the dismissal period as period under suspension and thereafter quashing of impugned orders to treat this suspension period as spent on duty also;

(d) to allow the costs of the proceedings."

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2. Briefly, the factual position as stated by the learned counsel for the applicant, is as under:

While posted at PS Dabri , the applicant Constable Jasbir Singh had allegedly received a sum of Rs.75,000/- from one Shri Ravi Kumar (complainant), S/o Shri Tale Ram R/o Village Madina,Distt. Rohtak (Haryana) in the presence of S/Shri Naveen Rana and Karamvir Dalal to get him enlisted in Delhi Police on sport basis. After about one month, the applicant told him that the appointment in Delhi Police will take some time and in the meantime, he proposed to deal in liquor. After that he got the complainant introduced to one Rajinder Sharma and till then neither the complainant had been got enlisted in Delhi Police nor paid back his money.

3. It has been further contended by learned counsel for applicant that in the list of witnesses, Shri Naveen Rana was not listed as a witness, instead one Shri Pradeep had been listed as witness. His name was neither in the list of witnesses nor in the complaint. The prosecution case during inquiry was that Rs.75,000/- was given to the applicant by Ravi Kumar after borrowing a sum of Rs.20,000/- from KaramVir Dalal and remaining amount from his house in order to prove the money transaction. It is also alleged that a sum of Rs.20,000/- was returned to the complainant by Shri Rajinder. The main shortcomings submitted by the learned counsel for the applicant are that

(i) the whole story of the prosecution with respect to paying money is false and as such a huge sum was allegedly paid without showing the source of amount, nowhere, in complaint, it was alleged that a sum of Rs.20,000/- was returned nor was it stated in the summary of allegations;

(ii)Without supplying the copy of the preliminary inquiry report on the basis of which inquiry was instituted, the Inquiry Officer proceeded to conduct the inquiry. The statement of witnesses were not recorded in the presence of the applicant. No money was paid to the applicant nor any

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money was recovered from the applicant. To show the payment, the false story of return of Rs.20,000/- was introduced by the prosecution which was not in the complaint and was sought to be proved through witnesses. However, PW4 Shri Rajinder Sharma categorically replied in his cross-examination that he had not given the sum of Rs.20,000/- to the complainant or any other person.

4. Inspite of the fact that no charge is made out against the applicant, the Inquiry Officer framed the charge and submitted his finding in departmental enquiry vide order dated 14.11.1997 (Annexure A-1) and the applicant made his submissions to the Disciplinary Authority on the earlier findings. The Disciplinary Authority without discussing any evidence on record has removed the applicant from service vide order dated 28.1.2004 (Annexure-A3). The appeal was also rejected by the Joint Commissioner of Police vide order dated 30.7.2004 (Annexure-A4).

5. The applicant preferred O.A. No. 3210 of 2001 before the Tribunal and the said O.A. was disposed of vide order 4.9.2002 (Annexure A-9) with the observation that the applicant had been prejudiced in not affording an effective opportunity to cross examine the witnesses whose statements were recorded in the preliminary enquiry. It was held that this vitiated the findings of the Inquiry Officer. The O.A. was allowed. The orders of punishment were quashed and the respondents were allowed liberty to proceed with the enquiry from the stage of cross examination.

6. In the final order dated 28.1.2004 which is impugned in this OA, the applicant was awarded penalty of forfeiting permanently five years' approved service. The intervening period from the date of dismissal to the date of reinstatement in service was decided to be treated as period not spent on duty.

7. Another ground taken by the applicant is that the preliminary enquiry was conducted by Inspector Sushil Kumar and hence prior to ordering departmental enquiry, approval under Rule 15(2) of Delhi Police (Punishment and Appeal) Rules,1980 was mandatory which was not obtained and hence the whole of the departmental enquiry proceedings are liable to be quashed as already held in the

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matter of SI Brahmpal Singh and also in reference to NO.8328-8428/P.Cell-Vig.(Misc.) dated 24.7.2001.

8. No explanation of the applicant was called for prior to ordering to proceed *ex parte* in re-enquiry and hence there is violation of mandatory provisions of Police Rules applicable to the applicant.

9. In the counter affidavit, the learned counsel for the respondents has made the following submissions:

Copy of the findings of the Inquiry Officer was delivered to the applicant on 17.7.1998, thereby affording him an opportunity for making representation with regard to the findings of the Inquiry Officer. He submitted his representation on 31.7.1998. After perusal of the findings and the other material available on record, the penalty of removal from service was imposed by the Disciplinary Authority on the applicant. The applicant's appeal was also rejected by the appellate authority vide order dated 17.5.1999. Thereafter, he filed OA No.3210/2001 before the Tribunal against the order of the Disciplinary Authority as well as the appellate authority . While quashing the order of the Disciplinary Authority as well as the Appellate Authority the Tribunal directed vide its order dated 4.9.2002 reinstating the applicant in service as a suspended employee with liberty to the respondents to proceed with inquiry from the stage of cross-examination of the witnesses by the applicant. In compliance of aforesaid Tribunal's order, the inquiry was conducted from the stage of cross-examination of the prosecution witnesses by the applicant after providing him copies of the statements recorded during the preliminary enquiry as well as the copy of inquiry report vide their Office Order dated 21.2.2003/

10. During the departmental enquiry, the Inquiry Officer sent summons several times to PW1 Ravi Kumar, PW2 Karamvir Singh and PW3 Pradeep Singh but they did not turn up and hence could not be examined by the Inquiry Officer. PW4 Rajender Singh also could not be cross-examined in the departmental enquiry as he was abroad. *The respondents have further submitted that the*

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applicant was asked twice during the departmental enquiry proceedings to accompany the Inquiry Officer to the residences of the witnesses who were residing in their village in Haryana and to avail the opportunity at their residences but he did not co-operate and refused to accompany the Inquiry Officer by submitting applications dated 18.7.2003 and 14.8.2003 mentioning therein that he had an apprehension to his life at the hands of the witnesses and also there is no provision in Delhi Police (Punishment & Appeal) Rules, 1980 to accompany the Inquiry Officer to their residences. The Inquiry Officer then framed the charge and delivered the same on 3.10.2003. The applicant submitted his defence statement on 9.10.2003. The Inquiry Officer, after assessing the entire material brought on the departmental enquiry file, concluded that the charges against the applicant are fully proved. It was brought out that it has clearly been mentioned in Rule 15(iii) and 16(iii) of the said Rules that the statements of previous enquiry may be brought on record of departmental proceeding when the witnesses are no longer available.

11. The enquiry report was received by the applicant on 11.11.2003 and submitted his representation on 28.11.2003. After careful consideration of all material as well as the defence statement and the representation of the applicant and also after hearing the applicant in person, the Disciplinary Authority awarded the punishment of forfeiture of five years' approved service permanently. The intervening period from the date of removal to the reinstatement in service was decided ^{as} the period as not spent on duty. The applicant filed an appeal against this order which was rejected by the appellate authority vide order dated 30.7.2004. It is against this order that he has filed the present OA.

12. The learned counsel for the respondents has made the following contentions:

There is no force in the plea of the applicant that he has been falsely implicated due to animities by the villagers. The allegation of paying of Rs.75,000/- to the applicant has been fully supported by the prosecution during the course of departmental proceedings PW-1 Ravi Kumar who was complainant has clearly stated this fact. He has further

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stated that Rs.55,000/- was paid after taking the same from his house while Rs.20,000/- were paid after taking loan from his friend Karamvir Singh and the same were returned to Sh. Rajinder Singh. This has been supported by PW-2 Karamvir Singh. The preliminary enquiry report was not cited as a relied upon documents in the departmental enquiry. Moreover, the Inquiry Officer had given an opportunity to the applicant for additional documents but the applicant did not avail the opportunity. He also did not make any request either to the Inquiry Officer or the then Disciplinary Authority during the course of disciplinary proceedings for obtaining these documents.

13. Though PW-4 Rajinder Singh has denied of giving Rs.20,000/- to the applicant which indicates that he has tried to save the applicant due to some reasons best known to him. But other PW-1, PW-2 and PW-3 have fully supported the prosecution case and their statements cannot be disbelieved. The transaction of money has been fully established during the departmental enquiry from the statement of PW-5.

14. Learned counsel for respondents vehemently contended that there is no violation of any rule during the course of departmental enquiry. Insp. Sushil Kumar PW-5 who conducted the preliminary enquiry earlier and recorded the statements of prosecution witnesses was called as an additional PW as the Tribunal did not forbid to collect any additional evidence. Insp. Sushil Kumar PW-5 was examined in the presence of the applicant and cross-examined by his defence assistant on his behalf.

15. While summing up their contentions learned counsel has submitted that the Inquiry Officer has found the charge proved against the applicant keeping in view the documentary evidence on record, ^{and} considering the defence statement of the applicant. In their reply in Para-5(A) of the counter reply, learned counsel for the respondents has admitted to the extent that the approval has not been obtained for initiating the departmental enquiry after receiving the preliminary enquiry report. But during the preliminary enquiry as well as departmental enquiry, the charge against the applicant has been proved on the basis of the evidence recorded

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during the preliminary enquiry as well as departmental enquiry proceedings. Para-5(B) of the OA has been rebutted as it is submitted that there is no provision in Delhi Police (P&A) Rules, 1980 to call the explanation of the applicant prior to ordering to proceed ex parte in re-enquiry.

16. We have heard the rival contentions of the learned counsel for both the parties and have carefully perused the material on record.

17. In so far as the procedure followed in conducting the enquiry, it is apparent that the respondents have followed the procedure as prescribed in rule 16(iii) of the Delhi Police (D&A) Rules and have conducted the enquiry in compliance of the Tribunal's order dated 04.9.2002 in OA 3210/2001 by which the respondents were directed to conduct the enquiry from the stage of cross-examination of the witnesses. Copies of all relevant documents as well as preliminary enquiry report were duly given to the applicant and he was afforded full opportunity for his defence. The main issue for consideration is that during the enquiry PWs did not appear and they could thus not be cross-examined by the applicant. However, as has been brought out by the respondents in the enquiry report, the applicant was afforded opportunity to accompany the Inquiry Officer to the native places of the witnesses but he refused to do so. Even though this can be termed as somewhat unusual method of approaching the witnesses for examination and cross-examination but it brings out the intention of the respondents to the extent that if the witnesses are not willing to participate in the enquiry, the Inquiry Officer would go to their residence along with the applicant to enable him to cross-examine them. It is apparently due to some personal enmity and may be some other reasons that the applicant did not go to the residences of the witnesses. Be that as it may, this can be viewed that the opportunity was afforded to the applicant which was declined by him.

18. The only other procedural shortcoming is that approval of the concerned authority was not obtained for initiating the departmental enquiry after receiving preliminary enquiry report. However, this can in no ^{way} be said to have prejudiced the applicant in so far as his defence is concerned. The entire factual record as brought out in the enquiry report shows the charge against him as proved. In fact

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the punishment finally awarded to him can in no way be considered to be unfair or excessive.

19. Learned counsel for the applicant in support of his contention has placed reliance on the decision of Hon'ble Supreme Court dated 21.11.2005 in Special Leave to Appeal (Civil) CC No.10487-10489/2005 Govt. of NCT of Delhi & Ors. Vs. Satya Dev Singh. In this case, the petitioner was acquitted. The respondent being a Constable in Delhi Police was charged for accepting illegal gratification from complainant. However, he was acquitted as it was held by the Special Judge that the prosecution failed to prove the charge against him. After acquittal, the Disciplinary Authority started departmental proceedings against him. The said order initiating departmental proceedings under Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 was challenged before the Tribunal. It was held by the Tribunal that the respondents were not justified in initiating departmental proceeding. The said order of Tribunal was under challenge in Writ Petition before the Hon'ble High Court. While upholding the order of the Tribunal, it was held that as none of the exceptions under Rule 12 of the said Rules was attracted, there was no infirmity or illegality in the order passed by the Tribunal. However, this case would not support the contention of the present applicant as there has been no acquittal of the applicant in the criminal case, which is still pending. Reliance has also been placed on the decision of this Tribunal dated 14.1.2004 in OA-1296/2003 (HC Jag Saran Vs. Govt. of NCT of Delhi). In this case also the facts are similar to the Satya Dev's case (supra). Here also the petitioner was acquitted in the criminal case and consequently cannot be punished on the same charge.

20. In view of the above discussion, we find no merit in the OA and accordingly, it is dismissed. No costs.

Chitra Chopra
(Chitra Chopra) _____
Member(A)

M.A.Khan
(M.A.Khan)
Vice-Chairman(J)