

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2758/2004

M.A.No.2273/2004

New Delhi, this the 5th day of August, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member(A)

1. S.I. Yashbir Singh, D-1318
S/o late Shri Raghbir Singh,
R/o E-1, East Chander Nagar,
Gali No.3, Delhi-51
2. HC Ravi Shanker 71/E
(Now 395/SEC. PIS NO.28823275)
S/o late Shri Murari Lal,
R/o H-24, Ganga Vihar,
Gali No.2 Near S.R. Public School,
Delhi-94
3. HC Jai Prakash No.151/E
(Now 406/SEC.PIS 28821911)
S/o Shri Roop Singh,
R/o House No.A-337,
Gali No.1, Kabir Nagar, Shahdara,
Delhi-94

....Applicants

(By Advocate: Shri Rajeshwar Singh)

Versus

1. Union of India, through
its Secretary,
Ministry of Home Affairs,
North Block, New Delhi-1
2. Commissioner of Police,
Delhi Police, Police Headquarters
MSO Building, I.P. Estate.
New Delhi

3. Addl. Commissioner of Police,
(Security),
Police Line, Vinay Marg,
New Delhi
4. Addl. Deputy Commissioner of Police,
(Security),
Police Line, Vinay Marg,
New Delhi

....Respondents

(By Advocate: Shri Om Prakash, for respondents 2-4)

Order(Oral)

Justice V.S. Aggarwal, Chairman

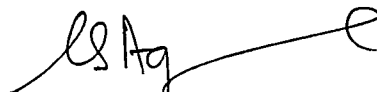
The applicant assails the orders passed by the disciplinary as well as the appellate authority.

2.It was alleged that the applicants while posted at P.P. East Old Seelampur, Delhi on 10.2.2003 were concerned in investigation of FIR No.38/2003. It pertained to offences punishable under Section 363 Indian Penal Code. They are stated to have given severe beatings to one Mohd. Usman resulting in some injuries on his person. The injured was medically examined. It is on these broad facts that the departmental proceedings had been initiated.

3.The enquiry officer returned the findings that on totality of facts and circumstances, charge against S.I. Yashvir Singh, Head Constable Jai Prakash and Head Constable Ravi Shanker are not established.

4.The Additional Deputy Commissioner of Police recorded the following note of disagreement:

"In view of the above discussion, the charge framed against all the three defaulters are proved beyond any shadow of doubt. Therefore, a copy of findings and this disagreement note are



being served to them with the direction to submit their representations, if any, against the disagreement note within 15 days from the date of its receipt, failing which it will be presumed that they have nothing to say in their defence and the matter will be decided on its merit. They can also appear before the undersigned on the date so fixed on their request."

5. After considering the reply, the disciplinary authority imposed a penalty of forfeiture of 2 years approved service on all the applicants entailing reduction in their pay. It reads:

"Therefore, I, Ranvir Singh Addl. Dy. Commissioner of Police, Security award a major punishment of forfeiture of 2 years approved service temporarily to all the three defaulters entailing reduction in the pay of SI Yashbir Singh No.D-1318 from Rs.7075/- to Rs.6725/-, HC Jai Prakash No.406/Sec. from Rs.4475/- to Rs.4305/- and HC Ravi Shanker No.395/Sec. from Rs.4390/- to Rs.4220/-."

The appeal filed was dismissed.

6. Besides other pleas, it was contended that the note of disagreement was not a tentative note of disagreement but a final finding arrived at. The learned counsel relied upon a decision of the Supreme Court in the case of Yoginath D. Bagde v. State of Maharashtra and Another, 1999 (7) SCC

62. The Supreme Court in this regard held:-

"The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."

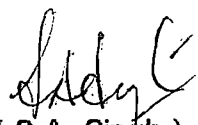
7. The findings are clear and leave no doubt that whenever a note of disagreement has to be recorded, it has to be a tentative note rather than a final

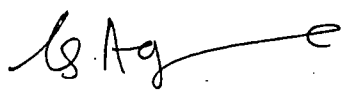
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finding. The same is based on fair play and principles of natural justice that have to be adopted. Because ^{if} a final finding has already been arrived at, there is little purpose to give a notice to show cause.

8. Resultantly, we quash the impugned orders and direct that if deemed appropriate, the disciplinary authority may take fresh steps from the stage the note of disagreement was recorded. Applicant would be entitled to the consequential benefits.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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