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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.3012/2004

New Delhi, this the 19th day of July, 2005

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

SI Prakash Singh
No.D/1813
P.S.Anand Vihar
N. Delhi.

.. Applicant

(By Advocate: Sh. R.K. Jain)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
Police Head Quarter
I.P.Estate, New Delhi.
2. Jt. Commissioner of Police
New Delhi Range
PHQ, I.P. Estate
N. Delhi.
3. Deputy Commissioner of Police
East Distt., Viswas Nagar
East Delhi
New Delhi.

.. Respondents

(By Advocate: Mrs. Rashmi Chopra)

O R D E R (Oral)

By Mr. Justice V.S.Aggarwal:

Applicant (Prakash Singh) had been served with the following
summary of allegations:

"You, Inspr. Sarbjit Singh, No.D-I/888 and
SI Prakash Singh, No.D/1813 that on 9.6.2000,
after receipt of an information that Chowkidar
Antosh Mandal was lying dead in the Garrage of
H. No.305 AGCR Enclave, Anand Vihar, both the
above named police officer along with staff
reached on the spot and inquest proceeding u/s
174 Cr. P.C. was conducted. On receipt of P.M.

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report on 18.7.2000 a case u/s 302 IPC was made out. Even earlier on the date of Post Mortem, Dr. Sarvesh Tandon who had conducted the Post Mortem told Inspr. Sarbjit Singh and SI Prakash Singh, that it was a case of smothering and penal Section 302 was attracted and also suggested registration of case, but both the police officers neither registered any case nor had made any efforts towards proper investigation or enquiry in to the matter and the inquest file was kept pending without efforts. On perusal of statements of Santosh Mandal, Dinesh Singh, Ramesh Mandal, it is revealed that they had suspected foul play in the death of Antosh Mandal. SI Prakash Singh did not mention the date while recording/attesting these statements.

The above act on the parts of You, Inspr. Sarbjit Singh, the then SHO/Anand Vihar and SI Prakash Singh, No.D/1813 amounts to gross misconduct, dereliction in discharge of their official duties. Which renders both of them liable for departmental action under Delhi Police Punishment & Appeal Rules, 1980."

2. The inquiry had been handed over to the Deputy Commissioner of Police, East District. After recording of the evidence, he had framed the following charge:

"I, Arvind Deep, Deputy Commissioner of Police, East District, Delhi, charge you - (1) Inspr. Sarbjeet Singh, No.D-I/888, the then SHO/Anand Vihar, and (2) SI Prakash Singh, No.D-1823, the investigation officer of inquest of Antosh Mandal date 9.6.2000 that while posted at Police Station Anand Vihar in above mentioned capacity you received an information on 9.6.2000 at about 0820 hrs. that the Chowkidar of House No.305, AGCR Enclave, Anand Vihar, Delhi was lying dead in the garage. You both attended the place of occurrence along with police staff and proceeded with inquest u/s 174 Cr. P.C.

On 12.6.2000, Santosh Mandal, the brother of the deceased (Antosh Mandal) categorically stated before Parkash Singh, the I.O. of the case at the time of autopsy that he

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suspected the members of the family had committed murder of his brother Antosh Mandal, as he contacted him on 29.5.2000 through telephone, who in turn had informed him that he had seen Mrs. Meenakshi Jain in compromising situation with someone in the absence of Mr. Vinay Jain and other family members and also told him that he (Antosh Mandal) had spoken about it to Mrs. Meenakshi Jain. Antosh Mandal had expressed his fear and apprehension of danger to his life from the members of Jain family. Furthermore, Dr. Sarvesh Tandon who conducted the autopsy had apprised the, SI Prakash Singh, No.D-1823 and Inspr. Sarbjeet Singh, No.D-I/888 that it was a clear cut case of smothering and therefore homicide.

From the statement of Shri Santosh Mandal, Ramesh Mandal (cousin of the deceased), Dinesh Singh (room mate of the deceased) and opinion given by Dr. Sarvesh Tandon vide PMR No.1308 dated 12.6.2000 that case appeared to be of homicide, you did not register a case u/s 302 IPC and relevant section (s) and therefore deliberately suppressed/concealed the commission of a heinous crime in the capacity of Station House Officer of Police Station Anand Vihar/Investigation Office of said Inquest and also delayed the registration of this murder case which suggest an ulterior motive behind it since no overt reason any where on the case file/any other police station record has been recorded as to on what grounds a case under relevant section of IPC regarding the homicide of the deceased, Antosh Mandal, was not registered.

The above act on the part of (1) Inspr. Sarbjeet Singh, No.D-I/888 in the capacity of the then SHO/Anand Vihar, and (2) SI Prakash Singh, No.D-1823 in the capacity of I.O. of Inquest dated 9.6.2000 amounts to deliberate heinous criminal offence with ulterior motive makes them unbecoming of a member of police force and renders them liable for punishment u/s 21 of Delhi Police (Punishment & Appeal) Rules - 1980."

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3. The disciplinary authority, i.e., Joint Commissioner of Police, agreeing with the findings, imposed a penalty of withholding of two increments for a period of three years without cumulative effect.

4. The applicant preferred an appeal, which was dismissed by the Commissioner of Police.

5. By virtue of the present application, the applicant seeks to assail the said orders on various grounds which we shall discuss hereinafter.

6. In the reply filed, the respondents plead that the applicant was Sub-Inspector in the concerned Police Station. He along with the Officer-Incharge of the Police Station had received an information that Chowkidar Antosh Mandal was lying dead in the Garage. Both the said Police Officers reached the spot and inquest proceedings. When the Post Mortem report was received, a case of punishment under Section 302 IPC was made out. Dr. Sarvesh Tandon had told the applicant and another that it was a case of smothering and penal Section 302 of the IPC was drawn. The applicant and another did not register the case for proper investigation to be carried on. When statements of others were recorded, it was suspected that there was foul play in the death. The applicant and others did not mention the date while recording/attesting those statements. As per the respondents, no procedural lapse has taken place. The proceedings had been conducted by the inquiry officer in accordance with law.

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7. We have heard the parties' counsel and have seen the relevant record.

8. The learned counsel for the applicant, in the first instance, argued that the summary of allegations were different from the charge framed and resultantly the entire proceedings should be quashed.

9. In support of his arguments, he relied upon the decision of this Tribunal in the case of **SUKH RAM v. UNION OF INDIA & OTHERS**, 2001 (2) ATJ 589 [O.A.No.654/2000, decided on 29.1.2001].

10. So far as the decision in the case of **Sukh Ram (supra)** is concerned, it is patently distinguishable. A bench of this Tribunal was concerned with the question that the charge on which the delinquent had been held guilty and later on punished was not mentioned in the summary of allegations or even the charge framed against him. It is on these facts that the following findings had been arrived at:

“10. Apart from it the aforesaid charge had not been alleged against the applicant either in the summary of allegations or in the charge framed against him. To our mind by not putting this materials to the applicant and basing the findings on it would be a denial of reasonable opportunity to the applicant and would also be in violation of principles of natural justice. Rule 16 (4) of the Delhi Police (Punishment & Appeal) Rules, hereinafter called 'Rule', stipulates that the charges are to be framed on the basis of evidence recorded in the support of summary of allegation. If the summary of allegation does not contain any imputation against the police officer, and in the absence of any evidence recorded in its support a police officer cannot be held guilty of that charge. In our considered view this



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would amount to punishing a delinquent police officer on an extraneous matter beyond the record of the Departmental Enquiry. To our mind, such a procedure adopted in the Departmental Enquiry, would be an antithesis to Cardinal Principle of Audi Altrem Partem."

11. That is not the position in this matter before us. As would be noticed hereinafter, the substratum of the allegations reported and mentioned in the charge are the same as are in the summary of allegations.

12. As one peruses the summary of allegations which we have reproduced above and the charge framed, it is clear that the main assertion is pertaining to not recording FIR and getting the investigation conducted properly in time, despite it having been brought to the notice that a serious offence punishable under Section 302 IPC was drawn. If certain additional facts were mentioned in the charge framed, that does not take away the main assertions to which we have referred to above and no prejudice even is shown to have been caused. We have no hesitation in rejecting the said plea.

13. In that event, it was contended that when the charge was framed which is different from the summary of allegations, no fresh opportunity had been given to the applicant to cross-examine the witnesses. Even on this count, the plea that has been urged must fail. Rule 16 of Delhi Police (Punishment & Appeal) Rules, deals with the procedure in the departmental enquiry.

14. Under Sub-Rule (iv) to Rule 16 after the evidence is recorded, the inquiry officer can frame the charge and explain it to

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the delinquent. Sub-Rule (v) to Rule 16 further states that the delinquent shall be required to state his defence witnesses whom he wishes to call and may be given time to this effect.

15. In the first instance, it must be stated that the applicant has not challenged the validity of the Rule. Further more, the inquiry officer has clearly recorded that after the charge was framed, an opportunity was given to the applicant to call his witnesses but he stated that he does not intend to produce any defence witness and that he will submit his written defence statement. In other words, the opportunity was not availed of. There is nothing on the record to show that even at any time, the applicant had requested that opportunity should be given to him to recall any other witness. It is too late in the day to raise the said plea.

16. In that event, the learned counsel urged that the inquiry officer had cross-examined the witnesses.

17. It has often been held that the inquiry officer is not a silent spectator. He can certainly ask questions to clarify the position. If certain questions, therefore, had been put to witnesses, it cannot be taken that it tantamounts to active cross-examination to cause prejudice. Unless it is shown that prejudice as such is caused, the plea must fail.

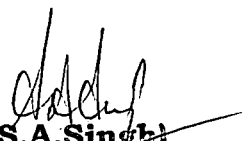
18. Only other submission made was that there was no evidence against the applicant.

19. In departmental proceedings, it is not necessary that the proof has to be beyond all reasonable doubts, like criminal trial.

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20. The evidence, particularly of Dr. Sarvesh Tandon and another clearly shows that as to how the matter was delayed despite his opinion about the nature of the injuries on the mortal remains of the deceased. The statement of Santosh Mandal also indicates to the same effect and in fact, it shows that there is an inordinate delay in getting the matter registered. In fact, it was stated to be of 49 days. It is these facts, which prompted the framing of the charge and resume proceedings. It cannot be termed that it is a case of no evidence.

21. For these reasons, the Original Application being without merit must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/