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Central Administrative Tribunal
Principal Bench

O.A.No.3030/2004

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri V.K.Agnihotri, Member(A)

New Delhi, this the 10th day of October, 2006

SI Ashwani Kumar
D-3642
PS Farsh Bazar
New Delhi.

Applicant

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

Vs.

1. The Govt. of NCT of Delhi
Through Commissioner of Police
PHQ, MSO Building
I.P.Estate
New Delhi.
2. Joint Commissioner of Police
New Delhi Range
Delhi.
3. Deputy Commissioner of Police
East Distt. Viswas Nagar
East Delhi
Delhi.

.... Respondents

(By Advocate: Sh. Om Prakash)

ORDER

By Justice B. Panigrahi, Chairman:

Applicant has challenged the validity of the orders passed by the disciplinary and appellate authority as well whereby and whereunder the punishment of forfeiture of one year approved service temporarily was inflicted, entailing proportionate reduction in his pay.

B.

2. Factual scenario as depicted in the application as well as in the counter reply is as follows:

2(a) The applicant is working as Sub-Inspector in Delhi Police. He has claimed to have serve the respondent-department with utmost sincerity, honesty and to the satisfaction of his superiors. On 11.5.2002, a departmental inquiry was ordered against the applicant on the basis of allegations that cases FIR No.20/01 under section 448/506 IPC Police Station Preet Vihar, FIR No.481/2001 under section 409/420/467/468/471/380 IPC Police Station I.P.Estate and FIR No.638/01 under section 420/406/509/506 IPC Preet Vihar were registered. All these cases were in relation with the management of Shree Cement Company, G-6, Hans Bhawan, New Delhi and one Rajinder Goel. Another FIR No.20/2001 was registered on 09.01.2001 at Police Station Preet Vihar on the complaint of Shri R.K. Ladha, Deputy Manager, M/s Shree Cement Ltd. Company against one Rajinder Goel with the allegation of criminal house trespass and theft of movables. The aforesaid FIR No.20/2001 was investigated by the applicant (SI Ashwani Kumar). It is alleged that the applicant carried the investigation in a non-professional manner as such he did not place the documentary evidence, i.e., copies of telephone bill, electricity bill and other relevant documents which were provided by Sh. R.K. Bharani, Manager of M/s Shree Cement Limited. These documents were essential to prove the possession of the complainant. However, the applicant put in the case in the Court on 17.8.2001. On 20.12.2001, the applicant moved an application seeking Chief Prosecuter's opinion on the complaint of Sh. Rajinder Goel who was accused in FIR No.20/2001 pertaining to the property C-34 Preet Vihar.

The Investigating Officer in FIR No.20/2001 was fully aware of the facts of the case but with some ulterior motive concealed the facts of the case. The applicant obtained the opinion of the Chief Prosecutor/East and on the basis of the said opinion, he registered a case FIR 638/2001 under sections 420/406/509/506 IPC Police Station Preet Vihar on 22.12.2001 against the management of Shri Cement Limited.

3. The applicant, observing undue haste, collected the opinion of the Chief Prosecutor and filed a chargesheet without meeting the queries raised by Chief Prosecutor of East District. It be noted that at that time, a civil suit was pending and, therefore, there was no need to obtain a legal opinion. Thus, the act of the applicant shows the fact of mala fide intention on his part.

4. The Inquiry Officer, after a detailed and elaborate inquiry, held the applicant guilty. He submitted the inquiry report to the disciplinary authority. The disciplinary authority supplied a copy of the inquiry report to the delinquent and further a chance was given to him to file his representation. The disciplinary authority, observing the essential formalities, held the applicant guilty and imposed the aforesaid punishment. The applicant preferred an appeal, which yielded no other result except its dismissal.

5. Respondents, on the other hand, have justified their decision of imposing penalty against the applicant. They have stated in their reply that on 20.12.2001, the applicant moved an application seeking prosecution opinion on the complaint of Shri Rajender Goel who was accused in FIR No.20/2001 pertaining to the property C-34, Preet Vihar, Delhi. Investigating Officer of FIR No.20/2001 was very much cognizant

of the fact of the case but in order to conceal certain essential facts in the above case, he obtained the opinin of Chief Prosecutor, East District and on the basis of the aforesaid opinion, he registered a case FIR No.638/2001 under sections 420/406/509/506 IPC Police Station Preet Vihar on 22.12.2001 against the Management of Shree Cement Limited. The opinion was obtained in a single after exhausting the channel of SHO/ACP, PP and C.P. of East District when a civil suit was pending. As a matter of prudence, taking legal opinion should have been eschewed but instead the I.O. (the applicant) obtained the legal opinion with malafide intention.

6. For the aforesaid act, there was a proceeding initiated for misconduct against the applicant vide order No.6503-16/HAP(P-1) East dated 11.5.2002. The applicant was awarded a punishment of forfeiture of one year approved service temporarily entailing proportionate reduction in his pay for a period of one year. It is stated that in proof of evidence of the ownership of Kothi No.34, Preet Vihar, Delhi-92, House Tax, Water and Electricity Bills were never placed in the investigation file.

7. On the complaint of Shri Rajender Prasad Goel, the applicant appears to have concealed the facts from SHO/ACP Preet Vihar about the registration of case FIR 20/2001 under sections 448/342/506/34 IPC Police Station Preet Vihar with an ulterior motive. It is further alleged that without observing any restrain upon himself, in all promptitude he registered a case by quickest means. He also failed to ascertain the involvement of Shri Rajender Prasad Goel in other cases too, i.e., FIR No.481 dated 5.11.2001 under sections 409/420/467/471/380 IPC Police

Station I.P. Estate. With these grounds, the respondents have prayed for dismissal of the case.

8. Mr. R.K. Jain, learned counsel appearing for the applicant has highlighted that the applicant, though innocent, has been falsely implicated in this case. He discharged his functions honestly and sincerely with all promptitude and has been victimized for a charge of alleged dereliction of duty. Respondents' counsel further reiterated that the applicant with undue haste proceeded with the investigation ignoring to procure certain necessary evidence against the accused as a reason whereof, the case ended in acquittal. In this regard, the respondents have produced the departmental proceeding file. On a careful perusal of the same, we found that undisputedly, the matter was referred to the Chief Prosecutor. It was stated that the Chief Prosecutor raised certain queries before submission of the final report. The complaint was purportedly made on 15.12.2000 but the FIR was registered on 09.01.2001. The delay occurred has not been explained. It is stated that there was an Agreement to Sell which was referred to in the complaint but the Chief Prosecutor opined that the Investigating Officer must take possession of the said agreement as well as the power of attorney. House Tax Receipts and Water Bills though the complainant stated in the FIR that they are in possession of the same, but the applicant has not taken possession of those documents.

9. The applicant on 15.7.2001 had written that all possible compliances have been made and no further compliance was possible and suggested that a challan should be sent to the Court on the available evidence. From the explanation, it is not clear as to what happened with regard to the queries made by the Chief Prosecutor. When the Chief

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Prosecutor opined that the case was weak and there was no chance of success, notwithstanding such observation, the applicant did recommend for sending the Challan to the Court.

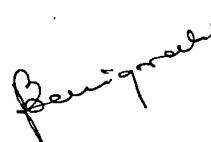
10. It is true that under section 173 of the Cr. P.C., the SHO has to file the chargesheet but since the suggestion was made by the applicant for sending challan, the SHO placed the Challan in the Court. Therefore, the applicant was responsible for not having collected the aforesaid document as desired by the Chief Prosecutor.

11. In this regard, there was ample evidence to suggest that the applicant had in hot haste obtained the opinion of the Chief Prosecutor but without complying the query made by him, he suggested to file the Challan. Therefore, we find that there is no vulnerability in the order imposing punishment of forfeiture of one year approved service temporarily entailing proportionate reduction in his pay.

12. In the result, there is no merit in the application and the same is accordingly, dismissed.



(V.K. AGNIHOTRI)
Member(A)



(B. PANIGRAHI)
Chairman

/rao/