

15

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3031/2004

New Delhi this 2nd day of September, 2006

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri N.D. Dayal, Member (A)

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

...Applicant.

(By Advocate: Shri R.K. Jain)

VERSUS

1. Govt. of N.C.T. 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,
New Delhi.
3. Deputy Commissioner of Police
East Distt., Viswas Nagar, East Delhi,
New Delhi.

...Respondents.

(By Advocate: Mrs. P.K.Gupta)

ORDER

Shri N.D. Dayal.

The applicant is Sub Inspector (SI) in Delhi Police. The applicant has stated that a departmental enquiry (DE) was initiated against him on 7.4.2003 and summary of allegations with list of witnesses and documents was served upon him by the inquiry officer on 23.4.2003. On 23.5.2003, a revised list of prosecution witnesses (PWs) was issued. The charges were framed against the applicant on 7.7.2003 by the inquiry officer on the basis of the statement of the PWs and on 25.7.2003, the applicant filed his defence statement. The inquiry officer submitted his findings on 13.8.2003 and the applicant submitted his representation to the disciplinary authority against these findings on 01.10.2003. The disciplinary authority by its order dated 11.11.2003 imposed upon him a punishment of forfeiture of two years approved service permanently entailing proportionate reduction in his pay. The punishment was to run concurrently with

the punishment already awarded to him vide order dated 01.8.2003. The applicant preferred an appeal on 27.11.2003 but the appellate authority rejected the same by its order dated 27.8.2004. The applicant is, therefore, before us seeking the following relief:-

In view of the facts mentioned in para 4 and grounds in para 5 above and other relevant material, the applicant respectfully prays that:

1. To quash and set aside the order dated 11.11.2003 passed by the Disciplinary Authority and order dated 27.8.2004 passed by the Appellate authority and the findings of the EO.
2. To grant the applicant all the consequential benefits.
3. Any other relief which the Hon'ble Tribunal may deem fit & proper and circumstances of the case.
4. Cost of proceedings may be awarded in favour of the applicant and against the respondents."

2. The respondents have submitted a counter reply to which a rejoinder has been filed by the applicant.

3. We have heard learned counsel for both sides and perused the pleadings as well as the original records that have been produced by the respondents.

4. At the outset, it would be useful to note the summary of allegations drawn up against the applicant:

"It has been alleged against SI Prakash Singh No./OP-1813 and HC Hardwari Lal No.436/E that while posted at police station New Ashok Nagar as SI (Ex.) and MHC (M). The SI Investigated the case FIR No.163/99 dated 13.7.99 o/s 498A/406/304-B IPC P.S. New Ashok Nagar. In this case he seized one plastic can containing some Kerosene Oil, broken bangles, a burnt cloth piece, match box with burnt & unburnt match sticks, a piece of broken mirror from the spot and scalp hair of the deceased from mortuary, which were required to be sent to FSL for chemical analysis for presence of kerosene as an important piece of evidence. He prepared the challan of the case on behalf of SHO/New Ashok Nagar, mentioning therein that FSL result of the case will be clubbed after receipt of the same and put in court the case on 20.10.99 where as the exhibits of the case were not sent to FSL for examination till 2.2.2001. The Sanction letter for allotment of Quota was received in the P.S. on 16.11.99. The copy of the endorsement letter No.21754-62 dated 15.11.99 was marked by the then SHO/New Ashok Nagar to MHC(M) who happens to be HC Hardwari Lal No.436/E but the MHC (M) did not bother any more and as a result no action was taken on the letter. During the course of evidence SI Parkash Singh had also deposed before Hon'ble Court of Shri D.C. Anand, ASJ, Karkardooma Court that exhibits were sent to FSL. When it came into the notice of Hon'ble court that exhibits have not been sent to FSL for expert opinion/examination, Hon'ble ASJ Passed serious remarks against SI Prakash Singh I.O. of the case. Inspite of objections raised by Ld. C.P./East at the time of scrutiny of case, SI Parkash Singh failed to send the exhibits to FSL for examination & written wrong facts in the challan and also deposed falsely before Hon'ble ASJ regarding sending the exhibits to FSL for examination.

The above act on the part of SI Prakash Singh No.D-1813 and HC Hardwari Lal No.436/E amounts to gross negligence, carelessness &

dereliction in the discharge of his official duties, which renders him liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) rules 1980."

5. A perusal of the inquiry report at Annexure A-3 indicates that the inquiry officer having taken note of the summary of allegations proceeded to record the statement of six PWs and three DWs after which the applicant gave his defence statement and then the evidence was discussed by the inquiry officer before coming to conclusion. It is noticed that the applicant and HC Hardwari Lal were both indicted in the same summary of allegations. Briefly the statements of PWs were as under:

- I) PW-1 has stated on the basis of record that the exhibits were not sent to FSL by the applicant. During the cross-examination by the defence assistant on behalf of the applicant, he deposed that he had no knowledge whether a letter dated 15.11.99 was received to MHC (M).
- II) PW2 stated on the basis of record that the applicant was investigating officer (IO) of the case. The case was challaned by SHO although the challan was taken to Court by the applicant. As per the judgement of the Court dated 14.9.2001 accused Sunil Kumar was convicted to undergo life imprisonment while the remaining two accused were acquitted. No cross-examination was conducted despite opportunity.
- III) PW-3 stated on the basis of duty roster that the applicant was on day emergency duty in the Police Station. The witness was not cross-examined.
- IV) PW-4 confirms from the record that the applicant was posted at Police Station New Ashok Nagar from 3.2.99 to 13.11.99. No cross examination was done.
- V) PW-5 deposed regarding HC Hardwari Lal posting at Police Station New Ashok Nagar , no cross examination was done.
- VI) PW-6 was Reader to SHO and on the basis of relevant register he stated that sanction letter dated 15.11.99 w.r.t. quota for November, 1999 was marked to MHC (M) on 16.11.99 by the SHO. During cross examination he confirmed that there was no signature of MHC (M) in token of having received such reference.

6. On the basis of the evidence and the record taken as exhibits by the inquiry officer, a charge was framed against the applicant as under:

"I H.V.S. Rathi, E.O., ACP/DE Cell, Delhi charge you SI Prakash Singh, No.D-1813, that while you were posted at PS New Ashok Nagar were entrusted with the investigation of case FIR no.163 dated 31.7.99 u/s 498-A/406/304 B IPC, PS New Ashok Nagar. In this case you seized one plastic cane containing some kerosene oil, broken bangles, a burnt cloth

26

piece, match box with burnt and unburnt matchsticks, a piece of broken mirror from the place of occurrence and scalp hair of the deceased from mortuary, which were required to be sent to F.S.L. for chemical analysis for presence of kerosene as an important piece of evidence. The Challan in this case was prepared mentioning therein that F.S.L. result will be clubbed after receipt of the same and put the challan in the Court on 20.10.99 whereas the exhibits of the case were not sent to F.S.L. for examination till 2.2.2001, despite receipt of sanction letter at the P.S. for allotment of quota for seeking experts opinion on exhibits bearing endorsement No.21754-62/SO DCP/E dated 15.11.99 which was marked to MHC (M) and IOs for compliance with by the then SHO/ New Ashok Nagar. During the course of evidence in the court you SI Prakash Singh also deposed before Hon'ble Court of Sh. D.C.Anand, A.S.Jkarkardooma Court that exhibits of this case have been sent to F.S.L. and when the Hon'ble Court came to know that exhibits in this case have not been sent to F.S.L. for expert's opinion/examination, passed serious remarks against you. In spite of objections raised by the prosecution branch at the time of scrutiny of case, you SI Prakash Singh failed to send the above exhibits to F.S.L. for examination and mentioned wrong facts in the challan and also deposed falsely before the trial Court Hon'ble ASJ, regarding sending the exhibits to F.S.L. for examination.

The above acts on your part (SI Prakash Singh, No.D-1813) amounts to grave misconduct negligence, carelessness, dereliction in the discharge of your official duties which renders you liable for punishment under the provision of Delhi Police (Punishment and Appeal) Rules 1980.)"

7. A copy of the charge was given to the applicant and explained to him in Hindi also. The applicant did not plead guilty of charge and preferred to produce witnesses in his defence. The deposition of DWs was taken as under:

- I) DW-1 stated on the basis of the Peon book of the Police Station for the period 08.10.99 to 24.5.2002 that on 15.11.1999 reference received was given to duty officer H.C. Radha Krishnan against his signature on 17.11.1999. He could not tell as to why it was given to him, whereas it was marked to .MHC (M) and I.O.s . This has been marked as exhibit PW-6/A.
- II) DW-2 on the basis of daily diary of District Lines dated 14.11.1999 stated as per DD No.17 the applicant reported at 9.35 am in the district lines as per order of DCP (East) from Police Station, New Ashok Nagar.
- III) DW-3 on the basis of daily diary (B) dated 13.11.99 Police Station, New Ashok Nagar stated that vide report no.35 at 3.45 pm the applicant had recorded his arrival, information proceeding on transfer to East District lines.

8. The applicant in his defence statement has pleaded that

- i) when the sanction letter dated 15.11.1999 was received he had already reported his arrival in the District Lines on 14.11.1999 on relief from Police Station, New Ashok Nagar on transfer. As such the question of the compliance of the letter, which also does not bear his signature in token of receipt, does not arise.

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ii) The reference was delivered to H.C.Radha Krishan against his signature, instead of delivering to MHC (M) or I.Os.

(iii) This letter dated 15.11.99 stated that I.Os. be directed to deposit the exhibits in the case list enclosed therein with CFSL Hyderabad within one month under intimation. The cases of Police Station, New Ashok Nagar were mentioned at Sr.Nos 25 and 26. The Director, CFSL had been asked in the letter to accept the exhibits and expedite opinion. As such without approval of the DCP/Crime and Railways to whom letter was endorsed for giving directions to the I.Os it was not possible to deposit with CFSL for opinion.

(iv) the fault for not sending the exhibits to CFSL lies upon the SHO, Police Station, New Ashok Nagar as the letter dated 15.11.1999 was received by him and he should have taken proper action. It is stated that quota for sending exhibits was not fixed till then and neither SHO took proper action nor the Reader to SHO who had delivered the sanction letter to the duty officer who had least concern with it.

(v) with regard to the observation of the Hon'ble Trial Court in its judgement dated 14.9.01, the applicant has been considered and given advice not to make any comment.

(vi) It is contended that the challan was prepared by the SHO and sent to Court mentioning that the result of the FSL is awaited and the same will be clubbed on receipt.

(vii) During the trial he deposed in the court that exhibits were deposited in the Malkhana and not sent to FSL for experts opinion and sanction letter dated 15.11.1999 clearly allots the relevant quota. The objections of prosecution branch were complied promptly by him that after receipt of result from CFSL, it will be clubbed. Since he was transferred it was not possible for him to send them.

9. The Inquiry Officer has discussed the evidence and noted that the applicant had investigated the case from the very beginning and deposited the exhibits in Malkhana. The case was challaned by the SHO and sent to court on 25.10.1999 through the applicant. The letter dated 15.11.1999 for seeking expert's opinion on the exhibits quota for November 1999 was received and marked to MHC (M) and IOs by the SHO. This reference was handed over to the duty officer H.C. Radha Krishan on 17.11.1999. The applicant arrived in East District Lines on 14.11.1999 having been relieved from Police Station, New Ashok Nagar. He has summarized that after completion of investigation the case was challdand on 06.09.1999 mentioning that FSL result of the case will be

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clubbed after receipt of the same and ultimately was put the challan in court by applicant on 25.10.1999. Even after an objection by prosecution branch the applicant failed to send the exhibits to FSL and mentioned the wrong facts in the challan. In court also the applicant deposed that the exhibits was sent to FSL. When the court came to know otherwise it passed serious remarks in para 31 of the judgment as follows :- "It is blunder on the part of the IO as in the absence of other evidence, such lapse on the part of the IO could be very fatal." The letter dated 15.11.1999 was marked to MHC (M) and IO for compliance who did not take further action. As such the Inquiry Officer did not find the plea taken by the applicant as convincing nor tenable because he has admitted that the objections raised by the prosecution were reported promptly by him and that after the receipt of result from CFSL, it will be clubbed. The Inquiry Officer has raised the question as to how result would be clubbed when the exhibits were not sent to the FSL.

10. An observation has been recorded by the Inquiry Officer that this case was 'a special report case' and the applicant being IO was supposed to take suitable steps for sending the exhibits to FSL well in time after seeking approval of the competent authority as a special case but he did nothing in this regard. The Inquiry Officer has also held that the SHO Police Station, New Ashok Nagar failed to maintain effective supervision in the investigation of the case, since SHO is solely responsible to prepare the challan properly although in practice it is prepared by the concerned IOs. However, the matter should have been properly looked into by him, while checking the case property register of the Makhana on regular intervals and ensure that the exhibits are sent to FSL well in time. Based on the above observations and the exhibits on record the Inquiry Officer concluded that the charge against the applicant stood fully proved. Incidentally the charge against H.C. Hardwari Lal was found not having been substantiated.

11. The applicant has assailed the orders of the disciplinary authority and appellate authority as well as contested that the punishment awarded was not proportionate to the allegations that this was a case of no evidence and the E.O. has taken extraneous material into consideration.

29

12. We find that a noticeable difference between the Summary of allegation and the charge framed is that the preparation of challan on behalf of SHO which had been specifically attributed to the applicant was subsequently mentioned in the charge without referring to the applicant in particular. The E.O. has held the SHO responsible for preparation of the challan properly. A perusal of the record shows that the challan was signed by the SHO. Further, if the challan stated that result of the case will be clubbed after receipt of the same, it is not explained as to how this would by itself imply that the exhibits had been sent to FSL. The applicant has been charged that the exhibits were not sent to FSL till 2.2.2001 despite receipt of sanction letter at the Police Station for allotment of quota for seeking expert opinion on the exhibits. Admittedly, this sanction letter was dated 15.11.1999, received on 16.11.1999 and although marked to HC Hardwari Lal, MHCM by the SHO but given to the duty officer who was another person. It is not disputed that the applicant was relieved on transfer from PS New Ashok Nagar on 13.11.1999 and joined at the District Lines on the next date on 14.11.1999, before sanction of allotment of quota for sending the exhibits to FSL was actually received in the PS. The original record shows a Note dated 9.9.1999 at page 39 from DCP, East Distt. Delhi to SHO, New Ashok Nagar PS on the subject of cases pending with Crime and Railways for prior permission for expert opinion. It states that the IOs of the cases in the enclosed list be directed to contact the Crime Branch regarding permission and intimate whether permission has been collected. If the cases were sent to CFSL, date vide which exhibits were sent be intimated. This has been marked to MHC (M) by the SHO on 10.9.1999. Our attention has not been drawn to any document showing that the IO of the present case was instructed in the matter. At pages 49-51 of the original record file, there is a communication of DCP, Crime and Railways dated 11.11.1999 addressed to CFSL, Hyderabad on the subject of seeking expert opinion on exhibits – quota for November, 1999 referring the enclosed list of cases to them for acceptance and expediting their opinion. Copy was endorsed to district DCPs concerned to direct the IOs of the cases to deposit the exhibits with Hyderabad within a month under intimation. This letter has been endorsed

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on 15.11.1999 to SHO for taking further steps within a week. It is noticed that the letter was marked to MHC (M)/IOs for compliance by the SHO. The enclosed list carries mention of the New Ashok Nagar PS cases at SI. No. 25&26. Therefore, if no further action was taken on this sanction letter, it is not clear as to how the applicant who had been relieved on 13.11.1999 and had already joined at District Lines on the next day would be directly concerned. No signature of the applicant is evident on the sanction letter as also contended by him in the application.

13. The applicant has, in para 5 (I) of his application, stated that there was no evidence on record that he had deposed falsely in the court that exhibits had been sent to FSL. In the counter reply, apart from mere statement that the applicant had so deposed before the Learned Court of Shri D.C. Anand, ASJ, Karkardooma Court, there appears to be no reference to any material in support there of. However, on perusal of the judgment dated 14.9.2001 of the learned Court of ASJ, Karkardooma available at page 203 onwards in the original records, it is noticed that at page 6 of the judgment, the Court has recorded "He also deposed that the exhibits of the case were sent to FSL". Further, on page 19, there are specific remarks against the applicant in this regard for not bothering to send the exhibits to FSL. It is not the case of the applicant that the judgment of Hon'ble ASJ, Karkardooma Courts has not become final.

14. The above discussion reveals that the charge of having falsely deposed before the learned Court of ASJ, Karkardooma Court that the exhibits had been sent to FSL and of serious remarks having been passed by the Court against the applicant cannot be denied. A report of the ACP, Sub-Division, Kalyan Puri dated 27.9.2001 at page 1 of the original record file shows that the exhibits had not been sent to FSL even till that date. Our attention has not been drawn to any material on record that would show otherwise. The SHO has been indicted in the enquiry report for improper preparation of challan and for not having properly looked into non-sending of the exhibits to CFSL, Hyderabad while checking the case property register of the malkhana at regular intervals to ensure that the exhibits were sent in time. He was issued a recordable warning. The charge

against the applicant for having falsely deposed before the learned Court of ASJ, Karkardooma, cannot, however, be passed on to the SHO by him.

15. A perusal of the order of punishment and the appellate order shows that these are reasoned and speaking orders.

16. The applicant has in para 5-S of the OA admitted that it was a special report case and as such a similar reference made by the E.O. in the enquiry report appears to have been correct. In so far as the contention of the applicant that revised list of PWs issued by the E.O. was contrary to the rules, the respondents have clarified that this was done at the initial stage of DE, which is not violative of the relevant rules. The applicant has failed to explain as to in what manner this has been of prejudice to him and to show that any grievance on this count was made during enquiry.

17. The Hon'ble Supreme Court in **State of Orissa Vs Bidya Bhushan Mohapatra** AIR 1963 SC 779 had pointed out that an order of punishment can be supported on any finding as to the substantial misdemeanour upon which the punishment can lawfully be imposed and it was not for the court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. In the decision in *Krishna Chandra Tandon's case* (1974) 4 SCC 374 the Apex Court has also observed that if an allegation or two fell, it hardly mattered if the order could be supported on other counts.

18. We are of the opinion that keeping in view the ratio of these judgments the present case cannot be said to be one of no evidence. In a uniform service like the police and that too in the capital city, it cannot be expected that such a misconduct would not be treated seriously meting out appropriate punishment. We are not inclined to agree that the penalty imposed upon the applicant could be considered to be disproportionate.

19. The application is, therefore, dismissed without any order as to costs.


(N.D. Dayal)
Member (A)


(Shanker Raju)
Member (J)