

(A)

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.1051/2004

New Delhi, this the 14th day of February, 2005

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

Jasmer Singh,
Const. No.1649/NW,
S/o Shri Surat Singh,
R/o Police Station Alipur,
North-West District, Delhi

....Applicant

(By Advocate: Shri Sama Singh)

Versus

1. Govt. of N.C.T. of Delhi,
Through its Chief Secretary,
Delhi Secretariat, I.P. Estate,
New Delhi-2
2. Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building,I.P. Estate,
New Delhi-2
3. Joint Commissioner of Police (HDQRS)
Northern Range,
M.S.O. Building,I.P. Estate,
New Delhi-2
4. Addl. Dy. Commissioner of Police,
North West District,
Ashok Vihar, Delhi

....Respondents

(By Advocate: Mrs.Renu George)

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Order(Oral)

Justice V.S. Aggarwal, Chairman

The following charge had been framed against the applicant who faced departmental proceedings alongwith two other co-delinquents Constable Harpal Singh and Constable Kartar Chand. The charge reads:

“I Insp. Hira Lal enquiry officer charge you constables Harpal Singh No.701/N.W., Const. Kartar chana No.793/N.W., and Const. Jasmer Sing No.-600/N.W. while posted at Distt. Line North-West, P.P. Prashant Vihar and P.S. Jhangir puri respectively That on 12-5-1990, H.C. Balbir Singh No. 218/W (now ASI) P.S. Nangloi Delhi while on patrolling duty in the area of P.S. Nangloi noticed you all while doing illegal checking of vehicles near Lokesh Cinema Nangloi on Rohtak Road with malafide intention and ulterior motive. H.C. Balbir Singh No.218/W apprehended all of you but const. Jasmer Singh No.600/N.W., managed to slip from there. All of you had admitted in writing before SHO P.S. Nangloi, that you were checking the vehicles connivance of one Dharma Ram of Bhadurgarh and one Contractor/ supplier of country made liquors in Sohati in Haryana.”

2. The enquiry officer thereupon had recorded:

“Their defence statement was properly studied. The main defence contention of the three constables is that their signatures were taken on blank papers is not convincing as they being a members of Police force at that time should not give their signatures on blank papers. As such other allegations of illegal checking, there were no any previous complaints with the local Police of such checking even on the day of the incident there was no any complaint from public nor any statement of the public was recorded. No recovery of anything was made from the three constables. No any D.D. entry was regarding the conduct of delinquent constables. No enquires were made by the SHO Nangloi regarding the incident the confessional statements of the constables have also not been attested by the SHO or by H.C. Balbir singh.

Conclusion: I have carefully gone through the statements of D.W.s and other documentary evidence available of file and came to the conclusion that the charge framed against the defaulting constables is partly proved.”

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3. Earlier the order was passed dismissing the applicant from service. He preferred O.A.No.2046/93. This Tribunal on 21.7.99 had allowed the O.A. and set aside the order passed by the disciplinary as well as the appellate authority. When the State challenged the order by filing Writ Petition No.11/2000, the Delhi High Court on 4.4.2002 had modified the order of this Tribunal and directed:

"We, therefore, in modification of the order passed by the learned Tribunal direct that the disciplinary authority shall reopen the departmental proceedings so far as the respondent is concerned and in the event the same enquiry officer is not available, shall appoint another enquiry officer and permit him to cross-examine the witnesses on behalf of the department and to examine his own witnesses on his own behalf.

The disciplinary authority thereafter shall pass an appropriate order in accordance with law. However, till an appropriate order is passed, the respondent herein shall continue to remain under suspension.

The departmental proceedings may be completed at an early date and preferably within a period of four months from the date of communication of this order. The respondents shall render all cooperation with the authorities in early completion of the enquiry proceedings failing which it will be open to the petitioners to take recourse to such action as is permissible in law.

For the reasons afore-mentioned, this writ petition is allowed in part and to the extent mentioned hereinbefore but in the facts and circumstances of this case, there shall be no order as to costs."

4. In pursuance of the order passed by the Delhi High Court, the proceedings had been started afresh. Thereafter, the disciplinary



authority had passed the following order:

"I have carefully gone through the statement of PWs/ DWs, defence statement of the defaulters, findings of the E.O., representations of the defaulter Constables as well as other material record brought on the D.E. file. They have also been heard in O.R. They have nothing more to add than what has been mentioned in their representations against the findings of the E.O. However, they have taken a plea that they are innocent and were falsely implicated by HC Balbir Singh in this case. They further pleaded that the statement of PW-1 & 2 are contradictory during the D.E. proceedings and their signatures were also taken on a plain paper by the SHO forcibly. According to them, no public person as well as other police personnel who accompanied with HC Balbir Singh has been cited as PW in the D.E., which indicates that they were falsely implicated. The plea adduced by the delinquent Constables are not tenable, as their unreasonable presence in the area of PS Nangloi itself indicates that they were indulging in illegal activities. Another plea taken by them that their signatures were obtained forcibly is not tenable, because if they were not at fault and since they are themselves police officers, their signature cannot be taken forcibly. Moreover, the report submitted by the then SHO/ Nangloi Insp. R.S. Dahiya clearly proves that they were at fault. Since at the time of O.R., they are requesting for leniency and submitted that they have already suffered a lot, having remained dismissed for more than 10 years, are facing financial crisis and are unable to look after their family properly during the period of dismissal. Keeping in view the fact and circumstances of the case and aware of the fact that they have undergone financial hardship during this period spanning more than a decade, which itself is enough punishments for their misdeeds, I am inclined to take a lenient view and impose the penalty that their three years approved service is forfeited permanently for purpose of their further promotion and seniority. They are hereby re-instated from suspension with immediate effect. Their suspension period from 18.5.90 to the date of issue of this order is also decided as period not spent on duty for all intents and purposes."

Appeal against the said order had been dismissed. Hence the present application.

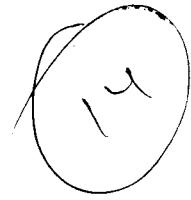
5. Learned counsel for the applicant had made certain submissions but we are not delving into the merits of the same. It has however been argued that report of the enquiry officer does not indicate as to which part of the charge is proved and which is not proved. This is for the reason that as already reproduced above, the enquiry officer had recorded a finding that the charge stood partly proved. A similar dispute had arisen earlier in O.A.Nos.535A and 656 of 2004 filed by Constable Harpal Singh and Constable Kartar Chand, respectively. Keeping in view this ambiguity, it was recorded:

“9. We have already reproduced above the operative part of the report of the inquiry officer. The inquiry officer, as already referred to above, had framed a charge. This pertained to the fact that the applicants were doing illegal checking of the vehicles near Lokesh Cinema Nangloi on Rohtak Road with malafide intention and ulterior motive. The reproduced portion of the report of the inquiry officer speaks volume because certain findings had been arrived at. Ultimately, he concluded that the charge is partly proved. We are at a loss to understand as to which part of the charge has been stated to have been proved and which is not proved. It is too vague and indefinite finding, which has been accepted by the disciplinary authority.

10. A word of caution only may be added. It is hoped that while making a report, a specific finding should be arrived at and the disciplinary authority is also expected simultaneously to look into this fact rather than accepting the same as presented.”

6. Keeping in view the same and on parity of reasoning, we quash the impugned orders and direct that:





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- a) if deemed appropriate, the disciplinary authority may direct the inquiry officer to submit a fresh report and thereafter further proceedings may be taken;
- b) consequential benefits should accrue to the applicant and, if any, be paid within three months of the receipt of the certified copy of the present order; and
- c) nothing said herein should be taken as any expression on the other facts.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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