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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.259/2004

Monday, this the 25th day of October 2004

Hon'ble Shri Justice V. S. Aggarwal, Chairman
Hon'ble Shri S. K. Naik, Member (A)

HC Brij Mohan Meena
No.353/C, PCR New Delhi

..Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

Union of India through

1. Joint Commissioner of Police (Vigilance)
Delhi Police, PHQ, MSO Building
IP Estate, New Delhi
2. Dy. Commissioner of Police (Vigilance)
Police Bhawan, Aruna Asaf Ali Road
Delhi

..Respondents

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

ORDER (ORAL)

Justice V.S. Aggarwal:

The applicant is a Head Constable in Delhi Police. He was served with the following articles of charge:-

"CHARGE

I, P.L. Suri, Insp. Admn., East Zone, PCR, Delhi charge you HC, Brij Mohan, No.353/C new 280/PCR (PIS No.28840057) of gross misconduct in that while posted at P.S. Nabi Karim you were entrusted a PCR call received at 8.55 PM on 9.4.99 vide DD No.22-A regarding the occurrence of theft at H.No.73 4/2, Prem Nagar, Nabi Karim, Delhi. You visited the spot and met the complainant of Smt. Kanti Devi w/o Sri Ram r/o 734/2, Prem Nagar, Nabi Karim, Delhi and found that the articles were lying scattered in the house. The complainant told you that Sushil Kumar had stolen Rs.47,000/- and some documents by breaking the lock of her house and kunda of Kanaster. Sushil Kumar was seeing by her son Vinod Kumar when he was getting down from the iron stairs of 1st floor of her house. You took Sushil Kumar to P.S. Nabi Karim on 9.4.99 on the complaint of Smt. Kanti Devi. You lodged your arrival at 6.15 AM vide DD No.8-A dated 10.4.99 mentioning therein that no body met you on the spot and no incident of theft had taken place. The circumstances were

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suspicious and you kept the D.D. entry pending enquiry which shows that you neither recorded the statement of complainant nor registered the case on 9.4.99. You registered the case vide FIR No.128/99 u/s 380 IPC P.S. Nabi Karim on 16.4.99. Not only you delayed the registration of the case but also failed to register it under the proper section of law i.e. 454/380 IPC which shows that you deliberately minimised the offence.

Smt. Kanti Devi also alleged that you told her that you will get the matter settled if she agree to accept the less amount. She also agreed to accept the less amount in case help is render to her. The father of Sushil Kumar also agreed to pay the amount in instalments in your presence but her money was neither returned nor recovered by you H.C. Brij Mohan.

The above act on your part amounts to gross misconduct, negligence and malafide intention and dereliction in the discharge of your official duties for which you are liable for punishment u/s 21 D.P. Act read with (Punishment and Appeal) Rules-1980."

2. The inquiry officer had returned the findings that the charge stood proved. The disciplinary authority on basis of the same imposed a penalty of forfeiture of one year's approved service temporarily entailing reduction in pay from Rs.4305/- to Rs.4220/- for a period of one year with immediate effect.

3. The applicant preferred an appeal. The appellate authority recorded that there is no doubt that the house article of the complainant had been stolen and she made a complaint but the version of the complainant that the applicant had taken Sushil Kumar to the Police Station on that night seems to be an afterthought. Keeping in view the same, the appellate authority recorded that this fact does find favour with the applicant. He reduced the punishment of forfeiture of one year's approved service to that of censure. The order reads:-

"I have also gone through the statements of Smt. Kanti Devi (PW-1) and her son Vimal Kumar (PW-2). During the cross-examination PW-1, has deposed that she did not see Sushil climbing or coming down from the staircase. However, she came to know about it from her son. The PW-2 has deposed that on 9.4.99 at about 2.00 PM, when he came to his mother's home he saw that Sushil was coming down from the 1st floor of their house on the iron staircase. He went back to Rly. Station after not finding his mother at home and in the evening he had gone to Rohtak. Next day at about 10.00 A.M., he returned home and came to know that theft has occurred in their house. He then told her mother that yesterday at about 2.00 P.M. he had seen Sushil coming down from the iron staircase. The version of the PW-2 clearly indicates that PW-1

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Smt. Kanti Devi was not away on that date i.e. on 9.4.99 that Sushil was seen coming down through iron staircase of her house. Rather she came to know about it next day i.e. on 10.4.99 when her son came back from Rohtak. The question arise when the complainant had came to know about it on 10.4.99 then how she presumed on 9.4.99 that Sushil was the person who had entered her house and stolen the article. There is no doubt that the house article of the complainant had been stolen and she made a complaint to the police but the version of the PW-1 that the appellant had taken Sushil Kumar and his parent to the Police Station on that night seems to be after thought in view of above discussion. This does not goes in the favour of the appellant.

Keeping in view of the totality and circumstance of the case, I hereby reduce the punishment of forfeiture of one year approved service temporarily entailing reduction in pay by one stage for a period of one year to that of censure."

4. Subsequently, the applicant made a representation for removal of his name from the secret list. The representation has since been rejected.

5. The applicant has assailed the order now being passed contending that it is a non-speaking order and otherwise also, it runs counter to the order passed by the appellate authority when read with the standing order No.265 issued by the Commissioner of Police.

6. The petition is being opposed.

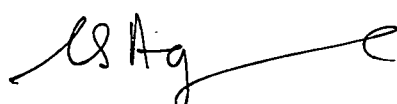
7. We have heard the parties' learned counsel and have seen the relevant record.

8. In the standing order No.265, instructions have been issued regarding preparation, maintenance, review and custody of agreed lists of persons of doubtful integrity. Under paragraph 4 of the standing order, two lists of persons of doubtful integrity are prepared, (i) agreed list and (ii) secret list.

9. We need not dwell into the other part of the standing order because the name of the applicant has been kept in the secret list of doubtful integrity. Paragraphs 6 & 7 deal in this regard and read as under:-

"6. SECRET LIST OF DOUBTFUL INTEGRITY

It will include the names of officers falling under one or more of the following categories.



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- i) Officials convicted in a Court of law on the charge of lack of integrity or for an offence involving moral turpitude but due to exceptional circumstances, penalty other than that of dismissal, removal or compulsory retirement is imposed upon them.
- ii) Officials who are awarded a major penalty departmentally in one of the following cases
 - a) On charges of lack of integrity
 - b) On charges of gross dereliction of duty in protecting the interest of Govt. although the corrupt motive may not be capable of proof.
- iii) Officials who were prosecuted but acquitted on technical grounds though on the basis of evidence led in the trial a reasonable suspicion against their integrity is raised, or who were dealt with departmentally but exonerated on technical grounds/winning over the witnesses.
- iv) Officials who are awarded minor penalty on charges involving specific charges of lack of integrity moral turpitude pursuant to major penalty proceedings.
- v) The name of Secret List shall be brought from the date of punishment order/date of conviction in Court trials.

7. EXCEPTIONS:

The names of officers/men of the following category shall not be included in the Secret List.

- a) Officers who have been acquitted honourably as a result of disciplinary proceedings or Court trial
- b) Officers against whom an enquiry or investigation has not brought forth sufficient evidence for recommending even departmental proceedings or Court trial
- c) Officers who have been convicted of offence not involving lack of integrity or moral turpitude.
- d) Officers against whom disciplinary proceedings have been completed or are in progress in respect of administrative lapse, minor violation of Conduct Rules and acts of indiscipline.
- e) The name of Police officers should not be brought on the Secret List for mere negligence or lack of supervision or for allegations of non-registration or delayed registration.

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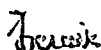
- f) The name of Police officers should not be brought on Secret List for mere violation of instructions if there is no attending malafide involved.
- g) In all criminal case registered against police officers in their private capacity involving their private affairs for example disputes and quarrels over property, dispute with neighbour, marital dispute, names should not be brought on Secret List."

10. From the aforesaid, it is clear that when an official is awarded minor penalty on charges involving specific charges of lack of integrity, moral turpitude pursuant to major penalty proceedings, his name can be kept in the secret list of doubtful integrity, subject to six exceptions that we have enumerated above.

11. Learned counsel for applicant contends that at best after the order passed by the appellate authority, the applicant could be held responsible for delay in recording/registering of the First Information Report and, therefore, his name could not have been kept on the secret list of doubtful integrity.

12. Perusal of the record reveals that these facts have been ignored by the impugned order dated 24.4.2003. In full fairness, the concerned authority must consider the order passed by the appellate authority and the reasons recorded therein and thereafter come to a conclusion after reading the same ~~that~~ ^{with} the standing order, which we have referred to above. It has not been done. In fact, no reasons unfortunately have been recorded.

13. Resultantly, we allow the present petition and quash the impugned order of 24.4.2003. It is directed that the appropriate authority would consider the claim of the applicant for removal of his name from the secret list of doubtful integrity and pass an appropriate order keeping in view our findings recorded above, particularly the order passed by the appellate authority. The said exercise may be done within three months from the date of receipt of a certified copy of the present order.



(S. K. Naik)
Member (A)



(V. S. Aggarwal)
Chairman