

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1900/2004

New Delhi, this the --- ~~November, 2005~~

Hon'ble Mr.Justice M.A.Khan, Vice-Chairman (J)
Hon'ble Mr.D.R.Tiwari, Member (A)

ASI Satpal Singh
No.5622/PCR
Now 1244/PCR
S/o Late Sh Chattru
House No.41, Shivpuri, Samaipur Badli,
Delhi.
(Advocate: Shri Arun Bhardwaj)

...Applicant.

Versus

National Capital Territory of Delhi, through:

1. The Commissioner of Police,
P.H.Q., I.P.Estate.
New Delhi.
2. Addl. Commissioner of Police,
PCR & Communication,
Delhi.
3. Deputy Commissioner of Police,
Police Control Room,
Delhi.

... Respondents.

(By Advocate: Mrs.Sumedha Sharma)

O R D E R

By Mr. Justice M.A.Khan VC(J):

The applicant has assailed the order of the disciplinary authority dated 08.10.2003 as confirmed by the appellate authority vide order dated 7.4.2004 whereby one year's approved service was forfeited temporarily entailing proportionate reduction in pay for a period of one year.

2. The factual background of the case, briefly stated, is as follows:

The applicant was Head Constable (Executive) (now he is ASI posted with 3rd Bn. DAP) when he was served with charge Memo for major penalty under Delhi Police (Punishment & Appeal) Rules, 1980. The Article of charge served on him reads as under:

"It is alleged that while posted in IIIrd Bn. DAP HC Satpal, No.2405/DAP (Now ASI 5622/PCR) (PIS NO.28770219) Const. Bhoori Singh, No.3782/DAP and Const. Amarjeet Singh, No.9510/DAP were deployed over desperate Bangladeshi national and undertrial prisoners namely Alam @ Mamun S/o Sh. Abdul Salam and Mijan S/o Goni for their production in the Hon'ble Court of Sh. Jagdeep Jain, Chief Judicial Magistrate, Faridabad on 10.7.2001 from Central Jail, Tihar and back. The under trial prisoners Alam @ Mamun and Mijan have been involved in 20 & 16 cases respectively. All the cases are of heinous crime and both the prisoners were desperate criminals. After production of the said undertrial prisoners at concerned Court ASI Parkash Chand, No.3815/D left the undertrial prisoners with the rest of the guard party in mid-way i.e. near AIIMS and went home after handing over his service revolver to Const. Bhoori Singh, No.3782/DAP, who was detailed without arms. In compliance of order of the said ASI, Const. Bhoori Singh had brought the revolver in safe custody and deposited the same in kot with 12 live cartridges, hostlier and Ian yard vide DD No.66-B, Roznamcha Central Jail, Tihar dated 10.7.2001. On the said allegations Insp. Radha Raman conducted an enquiry. Later on, a D.E. was initiated against ASI Parkash Chand, No.3815/D by DCP/IIIrd Bn. DAP for the said allegation vide his order No.7714-44/HAP-I/III Bn. DAP dated 3.8.2001. During D.E. proceedings against Parkash Chand, No.3815/D, HC(Ex.) Satpal, No.2045/DAP (Now ASI 5622/PCR) turned partially hostile and made a patently false statement during cross examination by the defaulter ASI Parkash Chand, No.3815/D, which is contrary to his own statement dated 27.9.01 recorded by Sh. D.R.Birdi, ACP (E.O. in D.E. against ASI Parkash Chand).

The above act on the part of HC(Ex.) Satpal, No.2045/DAP (Now ASI 5622/PCR) amounts to gross misconduct, indiscipline and renders him liable to be dealt with departmental under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

Therefore, I, Dr. A.K.Singh, DCP/PCR, Delhi hereby order to conduct a regular departmental enquiry against HC (Ex.) Satpal, No.2045/DAP (Now ASI 5622/PCR). The D.E. is entrusted to Shri M.L.Sharma, East & NEZ/PCR for conducting it's proceedings on day to day basis and submit the findings expeditiously. The E.O. will also submit the weekly progress report of the D.E. on every Friday to the undersigned."

3. It will also apt to produce summary of allegations (Annexure A-5)

served on him, which is extracted below:

It is alleged against you HC Satpal, No.2045/DAP (Now ASI No.5622/PCR) that you alongwith ASI Prakash Chand No.3815-D, Const. Ashok No.11640/DAP, Const. Bhoori Singh, No.3782/DAP and Const. Amarjeet Singh No.9510/DAP were detailed on Escort duty of UTP's named

Alam @ Mamun s/o Abdul Salam and Mijan S/o Goni to produce them in the court of Sh. Jagdeep Jain, CJM/Faridabad on 10.7.2001 from Tihar Jai,l. After having produced UTP's in the said court you were returning back to Delhi by DTC bus. When the bus reached AIIMS hospital ASI Prakash Chand No.3815-D got down from the bus and handed over his service revolver, 12 live cartridges, one holister and Ian yard to deposit the same in the kot and left for his house. On this allegation Insp. Radha Raman conducted an enquiry and later on a D.E. was initiated against ASI Prakash Chand vide order No.7714-44/HAP-I/III Bn./DAP dated 3.8.2001. During D.E. proceedings against ASI Prakash Chand, HC (Ex.) Satpal, No.2045/DAP (now ASI No.5622/PCR) turned hostile partially and made a patently false statement during cross examination by the defaulter ASI Prakash Chand which is contrary to his own statement dated 27.09.2001 recorded by Sh. D.R.Birdi, ACP/ (E.O. in D.E. against ASI Prakash Chand).

The above act on the part of HC Satpal No.2045/DAP (now ASI No.5622/PCR) amounts to gross misconduct, indiscipline which renders you liable to be dealt with departmentally under the provision of Delhi Police (Punishment and Appeal) Rules-1980."

4. Shri M.L.Sharma, Assistant Commissioner of Police was appointed as enquiry officer. On conclusion of the inquiry, he submitted his report on 28.7.2003 (Annexure A-3) upholding the charge as proved. The Deputy Commissioner of Police (Control Room), the disciplinary authority of the applicant after considering the representation of the applicant against the enquiry report, agreed with the finding of the enquiry officer and imposed the penalty as aforementioned. The Additional Commissioner of Police, PCR & Communication has rejected the appeal preferred by the applicant.

5. The applicant has challenged the orders of disciplinary authority on diverse grounds: that the penalty imposed vide impugned order is violative of principles of natural justice, disciplinary rules and the procedure; there is no evidence against the applicant to prove the charge and the finding is erroneous; the charge framed against the applicant is vague; the applicant has been denied the opportunity to defend him; the order passed does not relate to the subject matter of the enquiry; a copy of the preliminary enquiry report and the statement of the applicant which was recorded during the preliminary enquiry against the ASI Prakash Chand though admitted in

evidence were not supplied to him; similar proceedings were initiated against Inspector Radha Raman, who had conducted the preliminary enquiry against ASI Prakash Chand but later on the same were dropped, so, there is hostile discrimination against the applicant in the matter of punishment and that; there is no contradiction in the statement of the applicant during the preliminary enquiry and the departmental enquiry held against ASI Prakash Chand etc.

6. Respondents in the counter reply contested the OA and have pleaded that the statement made by the applicant during the preliminary enquiry before Inspector Radha Raman and during the departmental enquiry conducted by Shri D.R.Birdi, ACP against ASI Prakash Chand had lot of contradictions. During the departmental enquiry proceedings, ASI Prakash Chand put six questions in the cross examination and the facts disclosed in the reply of the cross-questioning did not find mention in the statement given by the applicant during preliminary enquiry. It was further submitted that the applicant Satpal Singh had admitted the facts during the cross examination that Constable Bhoori Singh handed over the revolver of ASI to him at the time of admission of under-trial prisoners in jail whereas this facts did not find mention in the statement of the applicant during the preliminary enquiry. It was further submitted that the applicant had failed to produce any satisfactory evidence to prove his innocence. So the charge against him was proved.

7. We have heard the learned counsel for the parties and perused the record.

8. The first and foremost submission of the applicant is that the charge memorandum served on the applicant was vague inasmuch as it did not spell out precisely as to what false statement was made by the applicant, which has been considered to be misconduct by the respondents. The memorandum of charge has already been re-produced. The charge

simply stated that the applicant had turned partially hostile during his cross-examination conducted by ASI Prakash Chand in the disciplinary proceedings, which were held later. It seems that the respondents considered the statement of the applicant, who was a witness of the Department, during the disciplinary enquiry held against ASI Prakash Chand to be not exactly verbatim repetition of the statement, which was made by him during the preliminary enquiry prelude to the departmental enquiry. What is the contradictory / false statement made by the applicant in the statement as a departmental witness in the proceedings held against ASI Prakash Chand was not disclosed in the memorandum of charge, enabling the applicant delinquent to know what exactly he was required to prove during the enquiry against him. It is clear violation of the principles of natural justice and has resulted in great prejudice to the applicant in his defence.

9. In the memorandum of charge, it was averred "during the D.E. proceedings against Prakash Chand, No. 3815/D, HC (Ex.) Sat Pal No.2045/DAP (now ASI No.5622-PCR) turned partially hostile and made a patently false statement during cross examination by the defaulter ASI Prakash Chand No.3815/D which is contrary to his own statement dated 27.9.2001 recorded by Shri D.R. Birdi, ACP/ (E.O. in D.E. against ASI Prakash Chand)." The charge is manifestly vague and does not convey exactly what contradictory and false statement was made by the applicant which was treated as a misconduct. Even in the summary of allegation which has also been reproduced, the false statement made by the applicant which was treated to be a misconduct, was not divulged. The allegations were similar to the one made in the memorandum of charge. Strangely, in the list of document cited in support of the memorandum of charge, only a copy of the statement of the applicant recorded during the disciplinary proceedings and the copy of the duty slip have been

mentioned but in the list of witnesses Inspector Radha Raman was cited as witness. Inspector Radha Raman had conducted the preliminary enquiry and had recorded the statement of the applicant. He was supposed to prove the statement of the applicant recorded during preliminary inquiry conducted against Prakash Chand. The statement of the applicant in preliminary enquiry was not a document, which was relied upon to prove the article of charge against the applicant.

10. In the peculiarity of the facts we tried to know about the false statement made by the applicant during the disciplinary proceedings conducted against ASI Prakash Chand, from the counter reply and the orders of the disciplinary authority and the appellate authority which was construed to be a misconduct committed by the applicant.

11. It is alleged in para-4 of brief facts of the counter affidavit as under:-

In fact the depositions made by the applicant during the statement in P.E. before Insp. Radha Raman and during D.E. proceedings before Sh. D.R. Birdi, ACP (E.O. in the D.E against ASI Parkash Chand) have lot of contradictions. During D.E. proceedings, ASI Parkash Chand, 3815/D put six questions in cross-examination and the facts disclosed in the reply of cross questioning did not find mentioned in the statement given by the applicant during P.E. The applicant HC Satpal, No.5622/PCR (Now 1244/PCR) has admitted the facts during cross-examination that Const. Bhoori Singh handed over the revolver of ASI to him at the time of admission of UTPs in Jail, whereas this facts did not find mentioned in the statement of the applicant during the P.E. Thus the applicant has failed to produce any satisfactory evidence to prove his innocence. The depositions of PWs and other documentary evidence is sufficient to prove the charge against the applicant.

12. In para-4 of the counter (grounds), it was averred as under:

"4. That the contents of this para of O.A. are wrong and denied. All the PWs supported the incident happened for which ASI Prakash Chand was dealt with departmentally but the applicant turned hostile during DE proceedings which was not expected from his being a responsible member of guard. Moreover, the contradiction was found in his statement during PE and DE proceedings which was later on proved during DE proceedings."

13. In para-6 of the counter reply (grounds), the respondents pleaded as under:

That the contents of this para of O.A. are wrong and denied. In the charge served upon applicant it is mentioned that applicant turned hostile partially and made a patently false statement during cross-examination by ASI Parkash Chand which was contrary to his own statement dated 27.9.01 recorded by Sh. D.R.Birdi, ACP (ED) in DE against ASI Parkash Chand which was later on proved during DE proceedings. The relevant documents/statement (his statement during DE of ASI Parkash Chand) were given to him during his DE proceedings. Hence the plea taken by him are baseless and after thought.

14. In the report of the enquiry officer (Annexure A-3) after recording the resume of the evidence of the witnesses examined by the Department and also the witnesses examined by the applicant in defence the discussion of evidence was as under:

"I have carefully gone through the statements of P.W's, D.W. and the final statement submitted by defaulter ASI Satpal, No.5622/PCR's in his defence. The plea put forth by the defaulter does not inspire confidence. In fact the depositions made by the defaulter during his statement in P.E. before Insp. Radha Raman and during P.E. proceeding before ACP Sh. R.R.Birdi have lot of contradictions. During P.E. proceedings defaulter ASI Prakash Chand No.3815.D put six questions in cross examination and the facts disclosed in the reply of cross question did not find mentioned in the statement given by defaulter during P.E. The defaulter ASI Sat Pal has admitted the facts during cross that Const. Bhoori Singh handed over the revolver of ASI to him at the time of admission of UTP's in jail. Whereas this fact does not find mentioned in the statement of defaulter during P.E. Thus the defaulter ASI has failed to rebut the charge. The depositions of P.W's and other documentary evidence on file is sufficient to hold him guilty of the charge.

CONCLUSION:

In view of the above discussion the charge framed against ASI Sat Pal, No.5622/PCR, is proved."

15. The order of the disciplinary authority (Annexure A-1) has recorded:

"The defaulter put-forth the plea that he in no way contradicted his statement whatever has been taken, is a subject matter of the cross-examination. The plea put-forth by the defaulter does not inspire confidence. In fact the depositions made by the defaulter during the statement in P.E. before Insp. Radha Raman and during D.E. proceedings before Shri D.R. Birdi, ACP (E.O. in the D.E. against ASI Prakash Chand) have lot of contradictions. During D.E. proceedings, ASI Prakash Chand, 9815/D put six questions in cross examination and the facts disclosed in the reply of cross questioning did not find mentioned in the statement given by defaulter during P.E. The defaulter HC Satpal, No.5622/PCR(Now 1244/PCR) has admitted the facts during cross-examination that Const. Bhoori Singh handed over the revolver of ASI to him at the time of admission of UTPs in Jail. Whereas this fact did not find mentioned in the statement of the defaulter during the P.E. Thus the defaulter has failed to produce any satisfactory evidence to prove his innocence. The depositions of

From the above, it may be inferred that what was considered misconduct on the part of the applicant was that his statement made in the cross examination conducted by ASI Prakash Chand was not the repetition of his statement made in the preliminary enquiry. But what is the contradiction and false was never disclosed or discussed in the memorandum of charge, in the enquiry report and in the order of the disciplinary authority or in the order of the appellate authority. According to the appellate authority, the statement of the applicant in answer to the questions put to him by ASI Prakash Chand in the cross-examination contained fact, which was not stated by the applicant in his statement which was recorded during the preliminary enquiry.

17. The disciplinary authorities have proceeded under an erroneous assumption that a witness is supposed to repeat verbatim what has been stated by him in the examination in chief or in the preliminary enquiry and he cannot state any other facts in answer to the questions which are allowed to put to him in cross examination. The essence of cross-examination of a witness is with the object either to obtain from such witness admission favourable to a party who is cross-examining him or to discredit him. As such cross-examination is directed to (i) the credibility of the witness; (ii) the fact stated in examination in chief and (iii) the facts where the witness has not deposed but to which party cross-examining thinks he is liable to depose. The very object of cross examination will be defeated if questions are confined to the facts stated in examination in chief or preliminary inquiry as the case may and questions which are relevant to prove innocence/defence of the charged official are not allowed. Therefore, if certain additional facts have been stated by the witnesses in answer to the question put in cross examination that by itself would not amount to contradiction of the statement made in the examination in chief or in the preliminary enquiry. Every deviation or

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PWs and other documentary evidence is sufficient to prove the charge against the defaulter."

16. The appellate authority in its order which is at Anneuxre A-2 after recording the pleas of the applicant in appeal has observed:

"That there was no contradiction either in his statement recorded during P.E. or in the statement recorded during the course of D.E. against ASI Parkash Chand. He had divulged the true facts of the incident in the interest of justice. The statement given by him was also corroborated by Sh. Radha Raman, Insp. And Const. Bhoori Singh who were examined by the Ld. E.O. during the course of D.E. which proved his truthfulness. They have divulged the same facts as narrated by him in reply to the cross-question put-up by the ASI Parkash Chand. In fact, these were the additional facts which could not find mentioned in the chief statement recorded by Sh.D.R.Birdhi during the course of D.E.

This plea of the appellant is not tenable. There were some contradictions in the statement of the appellant recorded during P.E. and during D.E. proceedings. ASI Parkash Chand put six questions during cross examination and the facts disclosed by the appellant in reply of cross examination were not found mentioned in the statement of the appellant recorded during P.E. The appellant has admitted the facts during cross examination that Const. Bhoori Singh had handed over the revolver of the ASI to him at the time of admission of UTPs in Tihar Jail.

2. That the P.Ws./D.W. examined during the course of D.E. had also corroborated that he had given true facts of version in the D.E. Narration of true facts does not tantamount to misconduct but unfortunately neither the E.O. nor the disciplinary authority paid any heed to his submissions.

This plea of the appellant is not admitted. The appellant had given contradictory statement, which could give benefit to the delinquent ASI against whom the D.E. was initiated.

3. That when ASI Parkash Chand had come at Tihar Jail, his(appellant) statement had already been recorded and due to this reason the facts concerning to the later developments could not be mentioned in his previous statement recorded during the P.E. Hence the allegations leveled against him that he had partially turned hostile and made a false statement during the D.E. against ASI Parkash Chand does not hold ground. Neither the E.O. nor the disciplinary authority paid any heed to his submissions.

This plea of the appellant cannot be trusted without any tangible evidence on record."

.....

From the above, it may be inferred that what was considered misconduct on the part of the applicant was that his statement made in the cross examination conducted by ASI Prakash Chand was not the repetition of his statement made in the preliminary enquiry. But what is the contradiction and false was never disclosed or discussed in the memorandum of charge, in the enquiry report and in the order of the disciplinary authority or in the order of the appellate authority. According to the appellate authority, the statement of the applicant in answer to the questions put to him by ASI Prakash Chand in the cross-examination contained fact, which was not stated by the applicant in his statement which was recorded during the preliminary enquiry.

17. The disciplinary authorities have proceeded under an erroneous assumption that a witness is supposed to repeat verbatim what has been stated by him in the examination in chief or in the preliminary enquiry and he cannot state any other facts in answer to the questions which are allowed to put to him in cross examination. The essence of cross-examination of a witness is with the object either to obtain from such witness admission favourable to a party who is cross-examining him or to discredit him. As such cross-examination is directed to (i) the credibility of the witness; (ii) the fact stated in examination in chief and (iii) the facts where the witness has not deposed but to which party cross-examining thinks he is liable to depose. The very object of cross examination will be defeated if questions are confined to the facts stated in examination in chief or preliminary inquiry as the case may be and questions which are relevant to prove innocence/defence of the charged official are not allowed. Therefore, if certain additional facts have been stated by the witnesses in answer to the question put in cross examination that by itself would not amount to contradiction of the statement made in the examination in chief or in the preliminary enquiry. Every deviation or

variation in the cross examination from the fact stated in examination in chief or preliminary inquiry will not be a contradiction or falsehood. Moreover, if the department considered a statement contradictory to an earlier statement of the witnesses his attention had to be drawn to his earlier statement so that he may offer explanation. Request could have been made for permission to cross-examine the witness or his re-examine for this purpose. Without this exercise it will be difficult to alleged that witness has had made a false statement.

18. During the course of hearing, our attention was drawn to the order dated 02.06.2003 which was filed by the applicant as Annexure A-8. From the order, it appears that a show cause notice for censure was issued to Inspector Radha Raman, who had conducted preliminary enquiry against ASI Prakash Chand, with exactly similar allegation and on consideration of his reply the show cause notice issued to him has been discharged and proceedings dropped.

19. From the arguments, it appears that what is considered to be false statement made by the applicant during the enquiry which was held against ASI Prem Chand was that in the cross examination, he had stated that the service revolver was also seen by him in the hand of ASI Prakash Chand which fact was not mentioned in the statement recorded during preliminary inquiry. It is not understood how the statement became contradictory to his earlier statement. Moreover, the attention of the applicant was not drawn to the alleged contradictory statement made by him in the cross examination to enable him to explain it. There was no cross examination of the applicant by the Presenting Officer in the case in respect of the alleged contradictory statement. The respondents are under a misconception of law that the witness was supposed to make parrot like repetition of the statement made in examination in chief or preliminary inquiry in the cross-examination also. It appears that the statement of the

applicant in the preliminary inquiry conducted against ASI Prakash Chand was that the revolver was in the possession of Constable Bhoori Singh and in the cross examination he appears to have stated that later on he had seen it in the hand of ASI Prakash Chand also. Any way a statement of a witness will not become false/contradictory simply because what was stated on the cross – examination was not mentioned in the statement recorded during preliminary inquiry in a departmental proceeding.

20. As such we agree with the contention of the learned counsel of the applicant that there was no evidence to sustain the charge framed against the applicant in this case. The applicant cannot be stated to have committed any misconduct for which he could be held guilty and punished.

21. Learned counsel of the applicant has raised a number of legal and factual pleas while assailing the charge. We need not delve deeper into them. In our view, the departmental enquiry is totally misconceived. It is not based of any evidence and great prejudice has been caused to the applicant in his defence and further more the principles of natural justice have also been violated.

22. In view of above discussion, the OA is allowed and the impugned orders are hereby quashed. The parties are left to bear their own costs.

D.R.Tiwari
(D.R.Tiwari)
Member (A)

M.A.Khan
(M.A.Khan)
Vice-Chairman(J)

/kdr/