

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**Original Application No.472/2004**

MA 408/2004

New Delhi, this the 6th day of April, 2005

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

Hardyal Singh
 S/o Shri Lachhaman Dass
 R/o 946, Sector 1, R.K.Puram
 New Delhi.

... Applicant

(By Advocate: Sh. Arun Bhardwaj)**Versus**

1. The Commissioner of Police
 Police Headquarters
 I.P. Estate, New Delhi.
2. Additional Commissioner of Police
 Police Headquarters
 I.P.Estate
 New Delhi.
3. Deputy Commissioner of Police
 Police Headquarters
 I.P.Estate
 New Delhi. ... Respondents

(By Advocate: Ms. Simran proxy for Mrs. Avnish Ahlawat)**ORDER****By Mr. Justice V.S.Aggarwal:**

Applicant was a Head Constable in Delhi Police. By virtue of the present application, he seeks to set aside the order passed by the disciplinary authority dated 21.5.1998. The disciplinary authority had dismissed the applicant from service. He had filed an appeal which too had been dismissed. He had earlier preferred OA 314/2002. This Tribunal on 7.2.2002, had set aside the order



— 2 —

passed by the appellate authority with liberty to the applicant to take additional pleas. As a result thereto, the appellate authority on 20.8.2002 had passed a fresh order again dismissing the appeal. By virtue of the present application, he seeks to set aside the said orders.

2. Some of the relevant facts are that the applicant faced departmental proceedings on the charge that in the month of September 1984, he enticed Ashok Kumar and others with the promise of sending them abroad and for that with the help of one agent Sardar Ali, he charged Rs.8,000/- each from Ashok Kumar and Boota Ram and Rs.7,000/- from Amar Chand as an advance in Delhi. With the help of Sardar Ali, the applicant had taken them to Bombay and further charged Rs.8000/- each from Sh. Ashok Kumar and Boota Ram and Rs.7000/- from Amar Chand on the pretext of Medical Examination.

3. The applicant had been served with the following summary of allegations:

"It was alleged by Sh. Ashok Kumar S/O Sh. Devi Chand R/o Vill. Phillor, Punjab that one Sardar Ali told him and six others that he can sent the complainant to Saudi Arabia through Hardayal Singh of Delhi against a payment of Rs.16,000/- per head. Accordingly all the seven persons came to Delhi by night but with Sardar Ali and went to the residence of Hardayal Singh. Hardayal Singh assured them in the matter and charged Rs.8,000/- each as an advance and told that the balance of Rs.8,000/- each will be charged after getting VISA etc. He also assured that they will be sent from Bombay. Accordingly all were taken to Bombay. In Bombay Hardayal Singh told that VISA etc. has been arranged and further charged Rs.8,000/- each from the victims. The

MS Ag

-3-

victims stayed at Bombay about one months but were not sent abroad. In the meanwhile Hardayal sent Sardar Ali to Punjab to bring another group of persons who were interested to go abroad. Hardayal stayed at Bombay and slipped & reached Delhi. When the victims came to know this they also came to Delhi & visited the residence of Hardayal Singh but in vain. Hardayal Singh and Sardar Ali made false promises & induced the innocent victims to part with their money on the pretext of sending them abroad.

2. A case FIR No.307 dated 18.7.85 u/s 420/120-B IPC & 24/25 Emigration Act PS R.K.Puram New Delhi was got registered. As a result of investigation, all allegations made by Ashok Kumar and others substantiated as such HC Hardayal Singh was arrested in this case besides others. The investigation was completed and challan against HC Hardayal Singh & his coaccused persons was filed in the court of Smt. Annu Malhotra, M.M. Patiala Hosue, New Delhi.

3. That you HC Hardayal Singh S/o Laxman Das r/o Qtr. No.946 Sec.3, R.K.Puram, New Delhi assured Ashok Kumar and others for sending them abroad against payment of Rs.16,000/- You Head Constable Hardayal Singh charged Rs.8,000/- from each victims as an advance and told that the balance of Rs.8,000/- each will be charged after getting VISA etc. You HC Hardayal Singh also assured that they will be sent from Bombay. Accordingly, all were taken to Bombay. In Bombay you Hardayal Singh told that VISA etc. has been arranged and you further charged Rs.8,000/- each from the victims. The victims stayed at Bombay about one month but were not sent abroad. In the meanwhile you HC Hardayal Singh sent Sardar Ali to Punjab to bring another ground of persons who interested to go abroad.

4. That the above act committed by you HC Hardayal Singh amounts to gross misconduct, negligence and dereliction and on your part renders you are liable for departmental action u/s 21 of Delhi Police Act, 1978."

18 Ag

(16)

-4-

4. The inquiry officer recorded that the charge, which had been framed, almost all in the summary of allegations, stood proved. Resultantly, the disciplinary authority dismissed the applicant from service and the appeal, to which we have referred to above already, also failed. The applicant had taken various pleas to assail the said orders. Some of them were not pleaded but we shall consider the pleas taken, which are purely legal.

5. Along with the Original Application, an application has been filed by the applicant seeking condonation of delay in filing of the Original Application. According to him, after this Tribunal remitted the matter, the appeal has been decided unilaterally on 20.8.2002. The applicant moved a Review Petition before the Lieutenant Governor but later he came to know that Review Petition was not maintainable and hence there occurred a delay in filing of the present application.

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

7. Pertaining to the question of condonation of delay, the only fact to be considered is whether there are just and sufficient grounds for condoning the delay or not? Admittedly, the applicant, after the appeal was dismissed on 20.8.2002, had preferred a Review Petition with the Lieutenant Governor. It is not in dispute that Review Petition is not maintainable. But once the applicant, as is apparent, had bonafidely been pursuing his remedy in a forum, which did not have the jurisdiction, in our considered

18 Ag

opinion, in the peculiar facts of the present case, it should form a good ground for condonation of delay.

8. At this stage, it would be worthwhile to mention that pertaining to the same allegations, the applicant had been tried by the learned Metropolitan Magistrate, New Delhi. Therein the charges had been framed pertaining to the offences punishable with respect to Section 420/120 B of the Indian Penal Code read with Section 24/25 of the Emigration Act. The learned Metropolitan Magistrate had held the applicant guilty of the offences punishable under Sections 420/120-B of the Indian Penal Code on 15.3.2003. The applicant preferred an appeal in the Court of jurisdiction which has since been dismissed on 17.11.2003. We were informed that Review Petition against the above said Judgement and order of sentence of the trial Court of the first Appellate Court is pending in the Delhi High Court.

9. Learned counsel for the applicant, at the outset, had contended that this complaint had been at the instance of one Shri Udho Ram, who was briefing the charge against the applicant and highlighted the said fact. He referred to us that there was past enmity in this regard. Such a plea even had been taken in the disciplinary proceedings contending that there was enmity with Udho Ram, father of one Mahender Pal. The disciplinary authority and the appellate authority had rejected the said plea. There is precious little on the record for this Tribunal to conclude that the findings in this regard are erroneous. In fact, we find little to support the said plea from the record. Otherwise also, this

As Ag

Tribunal will not sit as a Court of appeal. The scope for interference is limited. This Tribunal may only interfere if the findings are erroneous or perverse. In the present case, it cannot be so stated.

10. In that event, the learned counsel contended that the nature of the charge framed clearly indicates that it was a pre-determined mind on behalf of the inquiry officer and, therefore, the proceedings necessarily must be taken to be vitiated. He particularly referred to the fact mentioned in the charge that ".... Which renders you liable for punishment U/S 21 of Delhi Police Act, 1978."

11. In our considered opinion, the said plea necessarily has to be stated to be rejected. A charge is framed in departmental proceedings in consonance with the principles that the concerned person must know as to what is the assertion against him, which he has to meet. It is basically a statement of fact. The charge opens with the words "You, HC (Driver) Hardiyal Singh, No.104/PHQ hereby charged that". This clearly shows that it is conveying to the applicant what is alleged and material against him. It is not a finding that is arrived at. Otherwise also, in consonance with Rule 16 of the Delhi Police (Punishment & Appeal) Rules, firstly summary of allegations is served. After the evidence is produced, the charge is framed. The applicant gets thereafter a chance even to produce his defence. This shows that it is not a question of pre-determined mind but a fair play on the part of the department in accordance with the rules. It informs the

18 Ag e

- 7 -

applicant of the nature of assertions. No prejudice can be stated to have been caused and in this view of the matter, the contention must fail.

12. A feeble attempt even has been made to contend that in the summary of allegations, it has been stated that all the documents have been attached to the judicial file, which only conveys that the investigating officer even did not have the documents. The plea necessarily has to fail because the material on the record has to be seen, which is based on evidence. If evidence, which was recorded, shows that the assertions, to which we have referred above, were proved, it cannot be termed that the contention that merely because the documents are attached with judicial file and, therefore, proper inquiry could not be held, must fail.

13. Another argument advanced was that the applicant was unwell. But during the course of submissions, it was noticed and pointed even to the learned counsel that before the inquiry officer no such evidence had been produced. When there was no such evidence that had been produced, it is too late in the day to rake up such a contention.

14. The main submission, however, made was that during the course of submission of the inquiry, PW-3 (Darshan Singh) had not supported the department's case and in addition to that the applicant even had produced three witnesses, namely, Shri Sarwan Singh (DW-1), Shri Gurmeet Singh (DW-2) and Shri Santosh Kumar (DW-3) so as to say that what is being alleged against him

As Ag

is incorrect. According to the learned counsel, these were the persons, who were supposed to go abroad.

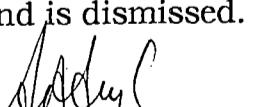
15. The learned counsel, in all fairness, took us to read the evidence and thereafter urged that the findings are inconsistent and erroneous.

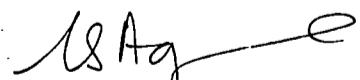
16. We have already referred to above the broad principles on departmental proceedings and scope of interference for judicial review. It is not a criminal trial. Therefore, the findings necessarily could not be based on material, which must show that the charge is proved beyond all reasonable doubts. On propensity of probabilities even such conclusions can be arrived.

17. The perusal of the report of the inquiry officer clearly shows that there was other material on the record, particularly the evidence of Shri Ashok Kumar, PW-1 and Shri Boota Ram, PW-2. The findings cannot be termed to be erroneous or that no reasonable person can come to such a conclusion. In that view of the matter, we find that it is not a fit case for judicial review.

18. As regards the quantum of punishment, in a disciplined force, such act indeed should be taken seriously and consequently when such an act has happened in the police force, we cannot think of any other penalty but of dismissal.

19. For these reasons, the OA being without merit must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/