

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.416/2004
with

Original Application No.417/2004

Original Application No.255/2004
Miscellaneous Application No.2431/2004

Original Application No.627/2004

Original Application No.633/2004

New Delhi, this the ^{24/5} day of May, 2005

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

Original Application No.416/2004

Silak Ram (then Gunman)
H.C.No.572/PCR
L-14/3 Mahender Park
Jahangiri Puri
Delhi. Applicant

Vs.

1. Union of India
Through Commissioner of Police
PHQ, IP Estate
New Delhi.
2. Addl. Commissioner of Police
PCR & Communication
Delhi.
3. Deputy Commissioner of Police
PCR & Communication
Delhi. Respondents

Original Application No.417/2004

Ram Kumar, ASI
4648/D
Rose Bud PCR Line
Delhi-110 0084 Applicant

Vs.

1. Commissioner of Police
PHQ, IP Estate
New Delhi.
2. Addl. Commissioner of Police
PCR & Communication, IP Estate,
New Delhi.
3. Deputy Commissioner of Police
PCR, IP Estate
New Delhi. Respondents

Original Application No.255/2004
Miscellaneous Application No.2431/2004

Ramesh Kumar HC
972/PCR
Model Town 2
Delhi. Applicant

Vs.

1. Commissioner of Police
Police Headquarters, IP Estate
New Delhi.
2. Addl. Commissioner of Police
PCR & Communication, PHQ
IP Estate
Delhi.
3. Deputy Commissioner of Police
PCR, IP Estate
New Delhi. Respondents

Original Application No.627/2004

Jeet Ram (Driver)
4211/PCR
Rose Bud PCR Line
Delhi-110 084 Applicant

Vs.

1. Commissioner of Police
PHQ, IP Estate
New Delhi.
2. Addl. Commissioner of Police

16

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PCR & Communication
Delhi.

3. Deputy Commissioner of Police
PCR & Communication
Delhi. ... Respondents

Original Application No.633/2004

1. Late ASI Khazan Singh (IC Van)
PCR & Communication ... Original Applicant
Delhi.

2. Smt. Shakuntala, widow
3. Vinod Bala Daughter age 28 years
4. Seema Daughter age 24 years
5. Rekha Daughter age 23 years
6. Savita Daughter age 21 years
7. Rajesh (Minor) son age 16 yrs
8. Meena (Minor) Daughter age 14 years ... Legal heirs

Vs.

1. Commissioner of Police
PHQ, IP Estate
New Delhi.

2. Addl. Commissioner of Police
PCR & Communication
Delhi.

3. Deputy Commissioner of Police
PCR & Communication
Delhi. ... Respondents

Present: Shri Arun Bhardwaj, Advocate for the applicants in
all the OAs.

Shri Ashwani Bhardwaj, proxy counsel for Sh. Ajesh
Luthra and Sh. Rajan Sharma in OAs 416, 417, 255,
627 of 2004, Mrs. Renu George, Advocate for the
respondents in OA 633/2004.

O R D E R

By Mr. Justice V.S. Aggarwal:

By this common order, we propose to dispose of the following
five Original Applications:

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17

-4-

1. Original Application No.416/2004
2. Original Application No.417/2004
3. Original Application No.255/2004
Miscellaneous Application No.2431/2004
4. Original Application No.627/2004
5. Original Application No.633/2004

2. In all these applications, different applicants had been dealt with departmentally. There were common proceedings and, therefore, they can conveniently be disposed of together. For the sake of convenience, we take the facts from OA No.255/2004.

3. On an earlier occasion, the applicant had filed OA 815/2002. Taking note of the decision of the Delhi High Court in Civil Writ Petition No.2368/2000 entitled **Shakti Singh v. Union of India & Ors.**, decided on 3.09.2002, the orders were set aside permitting the disciplinary authority to pass a fresh order. The disciplinary authority had thereafter imposed the following penalty:

“Therefore, in view of the directions given by the Hon’ble CAT vide judgements dated 9.12.02 and 28.1.03 and PHQ’s circular No.12230-430/CR-I/PHQ dated 16.4.02, it is hereby ordered that three years approved service of ASI Khazan Singh, No.4499/D, ASI Ram Kumar No.4648/D, Const. (Dvr.) Jeet Ram, No.4211/PCR, 210/Commn. (now 4529/PCR), HC Ramesh Kumar, No.1183/PCR 135/W (now 972/PCR) and HC Silak Ram, No.572/PCR, 314/N (now 877/PCR) is forfeited permanently entailing proportionate reduction in their pay.”

4. All the applicants had preferred different appeals, which were dismissed on 13.2.2002 by the Additional Commissioner of Police.

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5. The relevant facts, which give rise to the present applications, are that applicant, HC Ramesh Kumar and ASI Ram Kumar were posted at Shalimar Bagh Police Station in the Police Control Room Van (in short PCR Van), at the Static Commander C-4, in the PCR Unit of the zone. Applicants ASI Khajan Singh, HC Silak Ram, Constable (Driver) Jit Ram were posted in PCR Van (Commander-21). They had been served with the following summary of allegations:

"SUMMARY OF ALLEGATIONS"

It is alleged that on 10.8.2000 at 7.28 A.M. a telephonic call was received in Control Room which was attended by ASI Abdul Jaffar and he filled up PCR Form and sent the same to Commander-1 Net through W/Const. Gyan Wati. Commander-1 flashed the message to Commander-2, Commander-4 and Commander-21 which is as under:-

"EK BLUE COLOUR ESSTEM CAR NEAR BANGALI KOTHI MULTANI MOHALLA ME 3-4 LADKE SHEESHA BAND KARKE SANDEH JANAK HALAT ME EK GHANTE SE KHADE HAIN".

But the staff of Commander-4 i.e. ASI Ram Kumar, No.4648/D, HC Ramesh, No.1183/PCR and Commander-21 i.e. ASI Khajan Singh, No.4499/D, HC Silak Ram, No.572/PCR and Const.(Dvr.) Jeet Ram, No.4211/PCR recorded the messages in their log books which are as under:-

Commander-4:- "EK ESSTEM CAR RANI BAGH MULTANI MOHALLA ME 3-4 AADAMI SHAK KI HALAT ME SHEESHA BAND KARKE KHADE HAIN".

Commander-21:- "CALL NOTE KARO: EK NEELE RANG KI MARUTY CAR ESSTEM JO MULTANI MOHALLA RANI BAGH ME CAR BAND SHEESHA KIYA HUA HAI OR 3-4 LADKE

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19

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JINHONE APNE MUH DHAK RAKHE HAIN JO
UGARWADI LAE RAHE HAIN SHAK KE HALAT
ME KHADE HUA HAIN".

Later-on at 7.38 A.M. another call was received in Control Room that the occupant of the above said car had kidnapped a child. After some time the alleged car alongwith the dead body of the kidnapped child was found abandoned near cement siding Punjabi Bagh. Had C-4 and C-21 recorded the call correctly and if C-21, the PCR Van could reach the exact place immediately. Then the alleged incident could have been avoided.

It is further alleged that as per the directions of Senior Officers circulated vide this office order No.3864-901/Admn./PCR, dated 1.7.2000, that the PCR Van scheduled for patrolling near Parks/Schools/Places visited by morning walkers wherever applicable but the PCR Van C-21 remained at its base which is clear violation of the directions of senior officers. Had the staff of PCR Van C-21 complied with the said orders/directions of the senior officers. Then there position could have been near School & Parks at the time of incident and the alleged incident could be averted.

The above act on the part of ASI Khajan Singh, No.4499/D, ASI Ram Kumar No.4648/D, HC Silak Ram, No.572/PCR, HC Ramesh, No.1183/PCR and Const. (Dvr.) Jeet Ram, No.4211/PCR amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of their official duties which renders them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

6. The inquiry officer, Assistant Commissioner of Police, who had been so appointed, had framed a charge almost on the same lines as is the summary of allegations and thereafter concluded that the staff of Commander-21 could not reach at the place of incident because they recorded incomplete address. The staff of

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Commander-4 as well as Commander-21 had failed to record the contents of the call correctly. The staff of Commander-21 reached 'Multani Mohalla' within three minutes but they could not trace the exact place due to incomplete address. If they had recorded the complete address, they might have succeeded in tracing out the real culprits. They were held to have derelicted in duty to that extent.

7. But the second part of the charge regarding not bothering for the meticulous compliance of the instructions of senior officers circulated vide order dated 1.7.2000, which envisages that PCR van scheduled for patrolling should remain visible in their respective beats, was said to have been not substantiated. This was primarily on the ground that PCR Commander-21 is exotic one and does not perform the patrolling duty except attending distress calls.

8. It is these findings which prompted the disciplinary authority to pass an order to which we have referred to above.

9. By virtue of the present application, the said orders are being assailed on various grounds, which we shall take hereinafter.

10. Needless to state that in the reply filed, the applications are being contested.

11. During pendency of the OA No.255/2004, MA 2431/2004 had been filed to place on record the true copy of the order of 29.9.2000 passed by the respondents exonerating two other persons, true copy of the Call Book of Commander-4 showing the procedure for making the calls to different PCRs (which in fact

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has not been filed), true copy of the Call Book of conversation that took place pertaining to Commander-4 and also of Commander-21 and true copy of the site plan, which has also not been filed.

12. The application was being contested. But since contents of the conversation that had taken place was not being disputed, we find no reason to discard the same and take note of it wherever it is necessary.

13. It has been asserted that inquiry officer illegally prepared the summary of allegations, list of witnesses and documents and, therefore, assumed the role of the Presiding Officer. According to the applicant, it is illegal. We find no reason to accept the said argument. In departmental inquiries, the basic fact which have to consider is whether a fair opportunity is being given to the alleged delinquent to contest the nature of assertions and whether the procedure prescribed causes any prejudice to the said person or not. Incidentally, if the inquiry officer prepared the summary of allegations and list of witnesses, we find no reason as to why it can be assumed that there was no fair inquiry or that fair opportunity was not granted. The witnesses were examined in presence of the applicants. They were given opportunity to cross-examine. An opportunity was further given to produce the defence. Taking stock of the totality of the facts, we find that on the above said ground, therefore, it cannot be held that the inquiry officer could not be so appointed or that it would vitiate the inquiry.

14. In that event, it has also been contended that procedure laid down in Rule 16 of the Delhi Police (Punishment & Appeal)

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Rules, 1980 is illegal and is ultra vires of the provisions of the Constitution. The said question has already been considered by this Tribunal in OA 2098/01 (Ompal Singh v. UOI & Others., decided on 5.2.2002) and resultantly the said plea is simply to be stated to be rejected.

15. Before proceeding further, it would be proper to take note of the fact that the scope for interference in departmental proceedings by this Tribunal is limited. This Tribunal will not sit as a Court of appeal and scrutinize the evidence in that light. The Tribunal would only interfere if on the face of it, the findings are erroneous, based on no material or no prudent person would come to such a conclusion. We need not dwell into all the precedents on the subject but refer with advantage to the decision of the Supreme Court in the case of **B.C. CHATURVEDI v. UNION OF INDIA AND OTHERS**, JT 1995 (8) SC 6. The Supreme Court held that disciplinary authority is the sole judge of facts and ordinarily this Tribunal will not interfere on that count. The Supreme Court held:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches necessarily correct in the eyes of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of

18 May

23

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proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

16. Almost identical was the decision of the Supreme Court in the case of **DR. ANIL KAPOOR v. UNION OF INDIA AND ANOTHER**, JT 1998 (8) SC 29. The Supreme Court held that even if it is possible to take another view, it would not be appropriate to interfere.

17. With these basic principles, we dwell into the controversy.

18. According to the applicants' learned counsel, the calls as received were correctly recorded and findings to that effect by the concerned authorities cannot be sustained, which is to the contrary. He contended that the applicants, Ramesh Kumar and Ram Kumar were in the Static Commander C-4 in the PCR Unit of their zone. Commander-4 records the calls of its area for the

18 Aug

purpose of record only and for information of senior officers and for giving any clarifications sought by PCR Vans. It was not their duty to relay the message further. It was not their duty to go to the spot. Commander-4 has no field duty. Whenever any call is received at No.100 at the Police Headquarters called Commander-I, it is directly flashed by Commander-1 to Commander-2, which is the local police station in whose area the crime has taken place. It is also flashed to Commander-21 (the PCR Van stationed/available nearest to the place of occurrence). This message is also heard by Static Commander-4 but Static Commander-4 is not supposed to go to the place of incident/occurrence. The reason given is that the message flashed from Police Headquarter is received directly by Static Commander-2, which is a local police station, and Static Commander-21 (nearest PCR Van) for rushing to the place of occurrence. If in any situation, Mobile Commander-21 is not able to rush to the place of occurrence, then Commander-21 will inform Commander-1 who will then ask Commander-4 over the net as to which is the other nearest PCR van which could be directed to rush to the place of occurrence. It is thereafter that Commander-4 looks at the detailed information in the zone and inform Commander-1 about the nearest available PCR Van. In this backdrop, it is contended that no misconduct can be attributed to these two applicants.

19. Pertaining to the other three applicants, once again it is reiterated that they had correctly recorded the message. It is contended that both the entries of Commander-4 and Commander-

MS Ag

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-12 -
25

21 show that location specified is the same. Commander-1 had not given the message 'at Bengali Kothi' otherwise it would have certainly been recorded by Commander-4 and Commander-21.

20. On merits of the matter also, the applicants' counsel urged that in no event the other three applicants can be said to have derelicted in duty in any form.

21. To set the record straight, the Assistant Commissioner of Police, Police Control Room had given the details, which was given to us by the counsel, about the duties of staff at Static Van and how the Wireless Set is operated. It reads:

"The relevant information as required is as under:-

1	Static Van	Static Van always remains on duty at its base/location. This Van is not a patrolling Van. On receipt of Call from Central Police Control Room and direction/orders of other senior officers, all static PCR Vans have to attend the distress calls.
2.	Duties of staff at Static Van	All staff deployed at Static Van will remain alert in their Van as per briefing in this regard. They will move as and when they received calls/directions from Central Police Control Room/PHQ. After attending the call they will return at their base immediately. They do not perform patrolling duty in the area.
3.	Wireless Sets.	The wireless sets fitted at PCR Vans are both sided working i.e. receiver & transmit also. No set in PCR Unit is of one sided working.

Assistant Commissioner of Police,
Police Control Room, Delhi"

22. So far as the question as to whether the message had correctly been transmitted to Commander-4 and Commander-21 is concerned, we find no reason to take a different view. The findings

Ms Ag

are right that cannot be stated to be erroneous. It cannot even be stated that another view could be taken. This is for the reason that Commander-2 had correctly recorded the message and there is little possibility of their being not so correctly communicated on further transmission.

23. ASI Khajan Singh is the person who is stated to have recorded the message in Commander-21. Because of defective noting, though they went towards site, but could not trace it. The particulars were not completely recorded, therefore, ASI Khajan Singh is responsible in this regard. It is because of the delay occurred that incident took place. We find no reason, therefore, to conclude that ASI Khajan Singh can be exonerated.

24. However, as regards the HC Silak Ram, who was the Gunman and Constable (Driver) Jeet Ram, it has been pointed that they did their duty because Driver was to drive and the Gunman has to do his duty, if required. The duties of the Gunman has been provided to us. Though it is provided that he renders assistance to Incharge of the Van in attending the calls, but it is not the case that it is because of his non-assistance this fact took place.

25. Similar is the case of the Driver. The duties provided indicate that when Incharge of the Van and Gunaman are busy in attending a call, he will be responsible for attending the wireless set. That is so, but it is not the case of the respondents that it is because of his dereliction of duty, that incorrect message was recorded. Therefore, in the peculiar facts, the Driver of the Van

18 Aug 2008

27

-14-

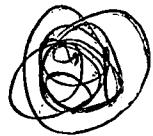
Jeet Ram and HC Silak Ram, Gunman cannot be held responsible.

There is no material to fix responsibility on them.

26. With respect to ASI Ram Kumar and HC Ramesh Kumar there has been a controversy raised during the course of submissions about the duties of Commander C-4 where these applicants were posted. In Paragraph 4.5 of the OA No.255/2004, it has been pleaded:

“4.5 That whenever any call at No.100 is received at the PHQ called Commander-I (C-I), it is directly flashed by C-1 to Commander-2 (the local police station in whose area the crime has taken place) and is also flashed to Commander-21 (the PCR van stationed/available nearest to the place of occurrence). This message is also just heard by static C-4, but static C-4 is not supposed to go to the place of occurrence. It is heard by C-4 because static C-4 is also stationed at the zonal level in the same Net. It is reiterated that C-4 is static where it is not the duty of the applicant to leave his office and to either rush to the local police station or to the PCR van. The reason is very clear and obvious as the message flashed from PHQ is received directly by Static C-2 (local police station and) static C-1 (nearest PCR van), for rushing to the place of occurrence. If in any situation, Mobile C-21 (the receiving nearest PCR van is not able to rush to the place of occurrence, then C-21 will inform C-1 (PHQ) who will then ask C-4 over the net as to which is the other nearest PCR van which could be directed to rush to the place of occurrence. C-4 (the static zonal then, looks at the detailed information which it has of all the PCR van in the zone and immediately informs C-1 (PHQ) about the nearest available PCR van. On getting this information from C-4, C-2 flashes the message again to the next available PCR van. Thus C-4 has no roll to play in going to the spot or in informing or guiding either C-21 or C-2, C-4 is static.”

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In the counter reply that has been field, though the fact has been denied but there are no other duties that have been shown as is apparent from the following pleadings:

“4.4 That the contents of para 4.4 of the OA are incorrect as stated, hence denied as the applicant is misleading the facts. The case was not given to C-4 as this is the primary duty of the C-4 to note all calls given by the commander-1 and he failed for the same and the staff of C-21 failed to reach the exact place of incident and to nab the culprits as well as the crime could have been prevented.

4.5 That the contents of para 4.5 of the OA are not admitted in view of reply to para 4.4 above.”

27. This clearly shows that the assertions of the applicant cannot be taken to be incorrect. The plea of the applicants finds support from the information that was given by the Assistant Commissioner of Police which we have reproduced above already. It reveals that these applicants were not supposed, thus, to proceed towards the site.

28. In the charge, it has been mentioned that had he taken the call to heart to spring into action instantaneously, this incident could have been very well averted. As per the duties fixed, Commander-21 with staff had proceeded towards the site. It has not been shown that had the message been transmitted correctly, the incident could have been avoided so far as these applicants are concerned. The transmission of the messages does not indicate that any further assistance was required from Commander-4. Thus, it can only be stated that the message had wrongly been recorded by Commander-4.

29

-16-

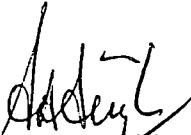
29. There has been no opinion expressed as to whether this wrong recording of the message could be taken to be, by itself, a misconduct or not. It would be appropriate that the disciplinary authority may record reasons in this regard. We are, therefore, not expressing any further opinion in this regard.

30. For the reasons recorded above, we pass the following order:

(a) Original Application filed by ASI Khajan Singh, i.e., OA No.633/2004, is dismissed.

(b) OAs filed by HC Silak Ram and Jeet Ram, i.e., OA No.416/2004 and OA No.627/2004 respectively, are allowed. The impugned orders are quashed.

(c) OAs filed by ASI Ram Kumar and HC Ramesh Kumar, i.e., No.417/2004 and OA No.255/2004 respectively, are allowed. It is directed that the disciplinary authority may re-consider the whole matter and pass appropriate fresh order in accordance with rules/law.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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