

3

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.779/2004

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Smt. Chitra Chopra, Member (A)

New Delhi, this the 3rd day of August, 2006

ASI Sube Singh
P.S. Parliament
Distt. Line
New Delhi.

..... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Vs.

1. Union of India
Through Lt. Governor
Govt. of NCT of Delhi
Raj Niwas Marg
Delhi.
2. Joint Commissioner of Police
New Delhi Range
Delhi Police Hqrs.
M.S.O. Building, I.P. Estate
New Delhi – 110 002.
3. Deputy Commissioner of Police
New Delhi Distt.
New Delhi. Respondents

(By Advocate: Sh. Saurabh Ahuja, proxy of Sh. Ajesh Luthra)

ORDER

By Justice B. Panigrahi, Chairman

The applicant has challenged legality, validity and propriety of the order of punishment dated 28.2.2003 passed by respondents 2 and 3 whereby they inflicted a punishment of forfeiture of one year approved service permanently

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entailing reduction in pay from Rs.4400/- to Rs.4300/- and also treated the period of suspension and dismissal as not spent on duty.

2. The factual scenario as portrayed by the applicant in the application is as follows:

3. The applicant was appointed as a Constable in Delhi Police on 18.1.68. He has claimed to have performed his service quite diligently and sincerely. He also acquired several rewards to his credit. He possessed an unblemished service record till initiation of departmental proceedings.

4. On 10.7.91, the applicant claimed to have received a secret information. Pursuant to the said information, he proceeded to Pragati Maidan alongwith Constable Harminder Singh and Constable Phool Singh. From Pragati Maidan, the applicant apprehended Nissar Ahmed with one Desi Katta and two rounds and accordingly an FIR was lodged being FIR No.344/91 on 10.7.91 under Section 25/54/59 of the Arms Act at Police Station Tilak Marg against Nissar Ahmed. On the same day at about 12.30 Noon, a Daily Diary entry No.31 was made by one Munshi Roznamcha mentioning that one Nissar Ahmed had been taken for production before the court by Head Constable Attar Singh. The fact, however, was that Head Constable Attar Singh had not taken Nissar Ahmed but he had taken one Krishan Kumar son of Shri Ram Dhari resident of E-139, Sultanpuri for production before the court. The said Krishan Kumar was arrested in the evening of 9.7.91 and accordingly was produced before the court on the following day i.e. 10.7.91. Munshi Roznamcha had erroneously under misconception entered the name of Nissar Ahmed instead of Krishan Kumar.

5. It appears that on the same day on 10.7.1991, another DD entry No.33 was recorded at 12.50 noon by the applicant wherein the name of the person taken by HC Attar Singh was correctly mentioned and the error in DD entry

3/

No.31 was highlighted. After Krishan Kumar was produced in Court, on 10.7.1991 at 5.45 PM, another DD entry was recorded being DD entry No.61, by mentioning that Krishan Kumar was produced in the morning before the learned SDM.

6. On 8.5.92, the applicant was dismissed from service under Article 311 (2)(b) on the basis of preliminary enquiry which was conducted unilaterally by the respondents. The applicant being aggrieved by such dismissal order filed a case before this Tribunal being O.A.No.1758/92 which was allowed by setting aside the order of dismissal passed by the respondents. The applicant was accordingly reinstated in service on 15.7.98. However, again from 15.7.98, he was placed under suspension till 19.8.99. The applicant has claimed that even though there was no legal evidence against him, he was illegally charged in the disciplinary proceedings with false grounds.

7. It was alleged in the departmental proceeding that the applicant had falsely implicated Nissar Ahmed in a criminal case. He further put Nissar Ahmed's Jhuggi on fire and demanded Rs.2000/- as illegal gratification from Shakila Begum wife of Nissar Ahmed in the presence of Prabhu Dayal and others. Pursuant to the said charge, the applicant submitted his statement of defence. The disciplinary authority, without application of his mind and without any evidence whatsoever, imposed an order of punishment. Against the said order of punishment, it seems that the applicant has filed an appeal but that too yielded no result except dismissal. Applicant, being aggrieved by the order of punishment, once again filed a case before this Tribunal being O.A. No.1751/2000. The said O.A. was allowed by holding that Joint Commissioner was not an authority mentioned in the Delhi Police Act/Rules. The respondents filed a writ petition before the High Court against the judgment of the Tribunal in

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O.A.1751/2000. The Hon'ble High Court, however, remitted the matter to this court for fresh consideration. It appears that this Tribunal on 28.11.2002 once again allowed the O.A. directing the respondents to pass fresh orders as in the impugned orders, there were multiple punishments inflicted against the petitioner which was hit by the judgment in Shakti Singh's case.

8. After the matter was remitted to the disciplinary authority, it once again imposed a punishment of forfeiture of one year approved service permanently entailing reduction in his pay from Rs.4400/- to Rs.4300/- and the suspension and dismissal period was treated as 'not spent on duty'. The applicant seems to have preferred an appeal before the appellate authority but it was dismissed without assigning any good and sufficient reasons. Therefore, he has filed the present O.A. praying for quashing the orders of punishment.

9. The respondents filed their detailed reply by controverting the allegations stated in the application. They have inter-alia averred that a complaint was received from many residents of Nangla Machi in which they stated that the applicant, ASI Sube Singh No.1533/ND had falsely implicated Shri Nissar Ahmed in a criminal case on instigation of one Salauddin. When he did not find anything objectionable, he put the Jhuggi of Nissar Ahmed on fire. Later on, he took away Nissar Ahmed into custody and demanded/accepted Rs.2000/- as illegal gratification from Smt. Shakeela Begum w/o of Sh. Nissar Ahmed in the presence of Prabhu Dayal and others on the pretext that he would release Shri Nissar Ahmed. A preliminary inquiry was conducted by one Sh. R.K. Sharma, ACP/HQ/Vigilance which revealed that on 7.7.1991, the applicant along with other policemen conducted a search of the house of said Nissar Ahmed. During the search, the lighting Dibbi containing kerosene oil fell on the ground with the result fire broke out in the Jhuggi. The applicant along with other neighbours of

(34)

the locality extinguished the fire. Nissar Ahmed, the owner of the Jhuggi while returning to his Jhuggi after hearing the news, was whisked away by the applicant to PS, Parliament Street. After hearing the said news, the neighbours including Sh. Prabhu Dayal and others came to PS, Parliaments Street and contacted the applicant who demanded Rs.10,000/- from them for the release of Nissar Ahmed. On next day, i.e., on 8.7.1991, Smt. Shakila Begum, w/o Nisar Ahmed managed to procure Rs.2000/- after mortgaging her ornaments with one goldsmith and handed over the amount to the applicant in the presence of S/Sh. Allah Bax, Bulaki and Prabhu Dayal. The applicant though promised to release Nissar Ahmed, did not do so. On the contrary, on 10.7.1991, he made a concocted story that he along with Constable Harminder Singh No.1905/ND and Constable Phool Singh No.1019/ND received a secret information that one person would come from Yamuna side and go towards Nagla Machi. At 4.15 P.M., Nissar Ahmed reached near Pragati Maidan as per secret information and they had apprehended the said accused with one Dessi Katta (country made revolver) and two rounds and accordingly, a case, being FIR No.344/91 under section 25/54/59 of the Arms Act was registered against the accused Nissar Ahmed at PS, Tilak Marg. He was put in the police custody but Siya Ram and Sh. Puran, two eye witnesses cited by the police clearly contradicted the said story of the applicant. The applicant made a concocted version that he along with Constable Phool Singh and Constable Harminder Singh while on patrolling duty received a secret information at the spot and swung into action at 4.15 P.M. In the said case, the accused Nissar Ahmed was acquitted under benefit of doubt. Therefore, there was sufficient material that the applicant in collusion and in conspiracy with Constable Phool Singh and Constable Harminder Singh foisted a false case against Nissar Ahmed. Since the applicant indulged in a

(35)

grave misconduct, a preliminary inquiry was conducted, consequent to which the order of dismissal was passed. The applicant filed a case before this Tribunal being OA No.1758/1992 and the order of dismissal was set-aside. A fresh inquiry was conducted. On the basis of evidence available in the disciplinary proceedings, the above punishment was inflicted. The appellate authority has also taken a conscious decision in this matter by upholding the punishment imposed by the disciplinary authority. With these averments, they claim for dismissal of this OA.

10. Mr. Arun Bhardwaj, the learned counsel appearing for the applicant has submitted that the respondent-authorities illegally dismissed the applicant under Article 311 (2) of the Constitution. Being aggrieved by the order of dismissal, the applicant challenged the same by filing OA No. 1758/1992. The dismissal order was set-aside and the applicant was directed to be reinstated. Pursuant to the Judgment, the respondents have no doubt reinstated the applicant in service but treated the period from the date of dismissal till the date of reinstatement as 'not spent on duty'. They have also reduced the scale of pay of the applicant from Rs.4400 to Rs.4300 without any lawful evidence. Two independent witnesses who were examined in criminal case and those who subsequently recanted from their statement, have neither been produced during inquiry nor their previous statement recorded has been placed in the record. FIR against Nissar Ahmed was registered at 4.15 P.M. on 10.7.1991 vide DD No.31 but mistakenly it was described by the clerk that Nissar was forwarded at 12.30 noon which was not at all possible.

11. Mr. Arun Bhardwaj, learned counsel for the applicant further advanced an inexorable plea by stating that one Krishan Kumar was produced at 12.30 noon but mistakenly the Clerk has written the name of Nissar Ahmed. It was

subsequently corrected by the applicant himself as per DD entry No.33 at 12.50 noon after Krishan Kumar was produced before the Court in judicial custody. On 10.7.91 itself at 5.45 PM, one Head Constable Attar Singh after returning from Court, recorded a DD entry No.61 mentioning that he had taken Krishan Kumar to the Court of Ld.SDM. If all three daily entries are read together, it will leave an impression that the name of Nissar Ahmed vide DD entry No.31 was mistakenly written. In fact, it was Krishan Kumar who was produced before the court at 12.30 Noon.

12. In so far as the first two charges are concerned, there has been no evidence placed by the prosecution. Therefore, the inquiry officer exonerated him from the charges. Independent witnesses S/Sh. Puran and Siya Ram, though their statement are alleged to have been recorded during the preliminary investigation, but neither their statements were produced nor they have been examined during the Inquiry. From the report, it only transpires that Puran was served with summons nearly four to five times but he could not be traced. We are at a loss to understand that when PW 16 stated that Sh. Puran was served with summons not only once but 4 to 5 times, how could he not be traced even by the Police agency. Similar is the case of Siya Ram.

13. It is trite in law that in disciplinary proceedings, no judicial review is permissible unless the findings of the disciplinary authority are perverse, not based on evidence and based on suspicion, surmises and inadmissible evidence.

14. It is true that in disciplinary proceedings, hear-say evidence and circumstantial evidence forming a chain is admissible since the proceedings may depend upon preponderance of probabilities but in order to ascertain a case as

of 'no evidence' or 'perverse finding', the test of a common reasonable prudent man is always intrinsically applicable.

15. Rule 15(3) of Delhi Police (Punishment & Appeal) Rules postulates that when witnesses are no longer available despite efforts being made, their previous statements can be placed on record and the prosecution can rely upon their statement. But if no previous statement of witnesses is placed before the inquiry officer, it is not understood how such inference could be drawn.

16. Sh. Saurabh Ahuja, proxy counsel appearing for Sh. Ajesh Luthra, learned counsel for the respondents, has stated that there is ample evidence placed by the prosecution to bring home the charges against the delinquent applicant. He further highlighted that wife of Sh. Nasir Ahmed has paid Rs.2000/- to the applicant Sube Singh. She managed to procure the said amount after selling her ornaments to one Goldsmith. Nisar Ahmed was kept in the lock up of PS, Parliament Street and a false case under Section 25/54/59 of the Arms Act was lodged against him. Sh. Siya Ram and Sh. Puran, two eye witnesses produced by the prosecution clearly resiled from their statement, which was allegedly made before ASI Sube Singh. Therefore, it is clearly established that the applicant has foisted a case in conspiracy and in collaboration with other police officers. In that view of the matter, no other reasonable conclusion could be drawn except that the charges were proved against the delinquent.

17. We have carefully gone into the statements and counter statements advanced by both the parties. The inquiry officer after thorough analysis of facts and circumstances and on evidence on record has unequivocally observed:

"Thus, in the totality of facts, statements of PWs and the attendant circumstances, to my perception, the charge of having accepted illegal gratification of Rs.2,000/- against ASI Sube Singh does not stand proved."

18. The inquiry officer further also exonerated the applicant of the charge of setting fire to the Jhuggi of Nissar Ahmed but observed by considering the preponderance of evidence against the applicant that he falsely implicated Nissar Ahmed in a case under Arms Act.

19. In this regard, the recovery of arms could have been proved by the evidence of Puran and Siya Ram. Conspicuously, it is noticed that neither Puran nor Siya Ram attended the inquiry proceedings notwithstanding service of notice upon them. Once the service was effected, it cannot be said that they could not be traced. The respondents attempted to rely upon their previous statements which were recorded during preliminary inquiry. It is significant to note that such statement has also not been produced during inquiry. No reasons have been assigned by the prosecution as to why they failed to produce those evidence. Without production of such evidence, it would be futile to state that such previous statement could be taken into record under Rule 15(3) of Delhi Police (Punishment & Appeal) Rules. Therefore, such statement can be of no help to the respondents in order to sustain the charges against the applicant.

20. So far as production of Krishan Kumar on 10.7.1991 before the Court is concerned, the evidence of PW-20 (HC Attar Singh) is relevant. HC Attar Singh stated that he had taken Krishan Kumar who was a P.O. in an accident case to Patiala House Court. He asked the constable accompanying him if he had made the departure entry in the daily diary for which the Constable replied in negative. He then telephoned the Munshi in the police station and the Munshi said that he will do it. When he returned to the police station after producing the accused in the Court, the Munshi said that there was a slip in the name of Nissar Ahmed and so he had made the entry of that name. The mistake was pointed out to the Munshi and the DD entry had been made by him in the name of Krishan Kumar.



Therefore, stand of the prosecution that the accused Nissar Ahmed was produced in the Court on 10.7.91 at 12.30 noon stands falsified in view of the categorical statement of PW-20.

21. Three DD entries have been placed here. On 10.7.1991, DD entry No.31 reflected that Nissar Ahmed was produced before the Court at 12.30 noon. The DD entry No.33 speaks that in fact it was Krishan Kumar who was produced on that day before the court and not Nissar Ahmed. The DD entry No.61 made at 5.45PM also confirms that it was Krishan Kumar who was produced before the court on 10.7.1991 at 12.30 noon. If all the three DD entries are read together, a reasonable prudent man would come to a conclusion that it was Krishan Kumar and not Nissar Ahmed who was produced in the Court at 12.30 noon.

22. The FIR lodged was at 4.30 PM. Before lodging of the FIR, it is not understood how could Nissar Ahmed be produced in the Court. Inference drawn by the inquiry officer that the defaulting police officers in order to cover their mistake might have managed the independent witnesses, is not based on any evidence. The independent witnesses, namely, Sh. Puran and Sh. Siya Ram must have been gained over by the accused as a reason thereof, they did not support the prosecution case. From the judgment of the Sessions Court, it is reflected that those witnesses have been won over by the accused. It is also reflected from the aforesaid judgment that the accused was acquitted under the benefit of doubt and not for 'want of evidence'.

23. Therefore, under such circumstances, it cannot be said that the Presenting Officer has placed proper evidence before the disciplinary authority so as to arrive at a finding that the applicant had falsely implicated Nissar Ahmed. Thus, the punishment imposed against the applicant forfeiting one year approved service permanently entailing reduction in his pay from Rs.4400/- to

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Rs.4300/- and treating the suspension and dismissal period from 16.7.1998 to 19.8.1999 and 3.5.1992 to 16.7.1998 respectively as 'not spent on duty' for all intents and purposes, is set aside.

24. The crucial question which comes up for our consideration is whether the applicant shall be paid full wages from the date of dismissal to that of reinstatement and also subsequently during the period of suspension i.e. from 16.7.98 to 19.8.99. It is true that the order of dismissal passed by the authorities was quashed by the Tribunal but it was challenged by the respondents before the Hon'ble High Court. In prosecuting the litigation, it almost took about six years. Neither party is responsible for such delay. It was on account of Laws' delay the matter of disciplinary proceedings could not come to an end. The respondents immediately reinstated the applicant in service as soon as the order passed by the Tribunal was received by them. Thus, according to our view, the respondents should not be shaddled to pay the entire salary for the period 3.5.92 to 16.7.98. In this regard, we rely upon the judgment reported in 2006 AIR SCW 3216 in the case of U.P.S.R.T.C. v. Sarada Prasad Misra & another wherein it was observed:

"In our opinion, however, the limited grievance of the learned counsel for the Corporation is well founded. Admittedly, the order of termination was passed on September 6, 1975. Admittedly, an application was made to the Conciliation Officer, Allahabad by the workman on July 17, 1982, that is, after about seven years from the date of termination. In the circumstances, therefore, the Corporation is justified in raising legitimate objection as regards payment of wages for the said period. Since the respondent had invoked jurisdiction of Labour Forum after seven years, it would not be appropriate to direct the appellant-Corporation to pay wages for the intervening period."

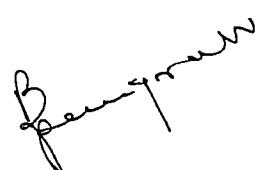
25. There is no precise formula nor 'cast iron rule' as to when the payment of full back wages should be allowed by the Courts/Tribunal. It depends upon facts and circumstances of each case. The Court or Tribunal should not be rigid or

mechanical but flexible and realistic. The litigation continued for a period of six years before the Tribunal and the Hon'ble High Court. Such delay cannot be attributable either to the applicant or to the respondents. It was Laws' delay for which neither party was responsible.

26. In this background, we, therefore, direct the respondents to pay 50% of the salary to the applicant for the period 8.5.92 to 16.7.98. So far as the period of suspension is concerned, since the applicant has been subsequently reinstated, he shall be entitled to the full salary for the period 16.7.98 to 19.8.99, deducting the suspension allowance if paid to the applicant. With these directions, the O.A. is disposed of.

Chitra Chopra

(SMT. CHITRA CHOPRA)
Member (A)



(B. PANIGRAHI)
Chairman

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