

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**Original Application No.785/2004**

New Delhi, this the 17th day of November, 2004

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

ASI Nain Singh
(PIS No.28730287)
r/o E-202, Rajiv Nagar
Delhi - 110 041.

... Applicant

(By Advocate: Sh. Anil Singhal)

Versus

1. Govt. of NCT of Delhi
through Commissioner of Police
Police Head Quarter
IP Estate, New Delhi.
 2. Addl. Commissioner of Police (Security)
Security Main Lines
Vinay Marg, New Delhi.
 3. Addl. DCP (Security)
Security Main Lines
Vinay Marg, New Delhi.
- ... Respondents

(By Advocate: Sh. Om Prakash proxy of Shri Harvir Singh)

ORDER

By Mr. Justice V.S. Aggarwal:

Applicant (Nain Singh) is an Assistant Sub Inspector in Delhi Police. Disciplinary proceedings had been initiated against him on the following allegations:

"It is alleged against ASI Nain Singh No.2503/Sec. That he was posted as liason officer at the residence of P.P. Sh. Nitish Kumar, Railway Minister, Govt. of India R/o B.D. Marg, New Delhi. It is alleged against you ASI/Admn. E Block and you were found absent from your duties since 3-8-2001, without any information or intimation. So you ASI Nain Singh No.2503/Sec. was marked absent vide DD No.45-B dated 7-8-2001 E Block Sec. Lines, w.e.f. 3-8-2001 at 9 AM. It is further alleged against you ASI Nain Singh 2503/Sec. Tghat you misrepresented to the PSO's that you will be on leave w.e.f. 3-8-2001 where as you Nain Singh ASI was arrested in case F.I.R. No.969/01 dated 3-8-2001 U/S

AS Ag

9

-2-

186/353/506/34 IPC & 3, 4 D.P. Act P.S. Sultan Puri, North West Distt. Delhi. It is further alleged against you ASI Nain Singh No.2503/Sec. that you willfully concealed the fact of your arrest and intentionally you did not inform your Sr. Officer about this fact.

The above act on the part of you ASI Nain Singh 2503/Sec. amounts to gross misconduct, carelessness dereliction in the discharge of your official duties and willfully concealing your arrest in the above criminal case from your Sr. Officers by not intimating which render you ASI Nain Singh No.2503/Sec. liable to be dealt with departmentally according to Rule 19 of Delhi Police (Punishment & Appeal) Rules 1980 and punishable under rule 21 of Delhi Police Act, 1978."

2. The Inquiry Officer had framed the following charge against the applicant, which reads:

"I J.K.Kaushi, ACP/Sec. charge you ASI Nain Singh No.2503/Sec. that while posted at 'E' Block. You were detailed as Liaison Officer at the residence of PP Sh. Nitish Kr. Union Minister for Railways. On 7.8.2001, when you were checked by Sh. H.K.Vohra the then ACP/Admn. E-Block, found absent from your duty since 3.8.2001 without any information/intimation. You resumed your duty after absenting yourself for the period of 10 days 7 hrs. unauthorisedly willfully and without any intimation. Further you misrepresented the PSOs that you were on leave w.e.f. 3.8.2001 whereas infact you were arrested in case FIR No.969/2001, u/s 186/353/506/34 IPC, PS Sultanpur Delhi. You did not inform the dept. about your involvement and arrest in the above said case and subsequently releasing on bail. Thus you have violated the provision of Para-7 of S.O. No.123/89 as well as instructions in this regard issued by the Govt. of India.

The above act on your part amounts to gross misconduct, carelessness and dereliction in the discharge of your official duties which render you punishable under the provision of Delhi police (Punishment and Appeal) Rules 1980 read with Sec.21 of D.P. Act, 1978."

3. The findings returned were that the assertions against the applicant have been proved. The disciplinary authority agreeing with the findings of the Inquiry Officer held that the applicant had mislead his colleagues and absented from duty unauthorisedly and

U.S.A.

failed to inform the department about his involvement in the criminal case. He was awarded a penalty of forfeiture of two years approved service permanently entailing reduction in his pay from Rs.4800 per month to Rs.4600 per month. His absence period from 3.8.2001 to 12.8.2001 was decided as period not spent on duty. The applicant preferred an appeal, which was dismissed by the Additional Commissioner of Police on 5.3.2003.

4. By virtue of the present application, the applicant seeks to set aside the abovesaid orders and to restore his reduced pay and seniority with consequential benefits.

5. The grievance of the applicant is that there was no evidence against him. He had informed the Commissioner of Police. He was in police custody from 3.8.2001 to 6.8.2001 and thereafter, he was totally depressed and was running from pillar to post for securing bail of his family members. Further he had proceeded on leave. Therefore, there was no occasion to initiate the disciplinary proceedings and for the penalty order that had been passed.

6. The petition has been contested. The respondents' plea is that disciplinary proceedings were initiated on the allegations that the applicant while posted at 'E' Block/Section, was attached with Shri Nitish Kumar, Railway Minister as Liaison Officer. He was marked absent vide Daily Diary No.45-B treating him absent from 3.8.2001. He resumed his duty on 13.8.2001. He misrepresented the PSOs that he was on leave on 3.8.2001. In fact, he was arrested in a case of FIR No.969/2001 dated 3.8.2001. He did not inform the department about his involvement and arrest. The disciplinary proceedings were held in accordance with law. So far as informing the Commissioner of Police is concerned, the

ls Ag —————



-4 /

respondents plead that it was a complaint made to the Commissioner of Police against local police.

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

8. The short question that comes up for consideration is as to whether in the facts of the present case, it can be stated that there is any material against the applicant or not and whether the findings arrived at can be sustained in terms as to if it is perverse or not.

9. The first part of the assertions against the applicant is that he was detailed as Liaison Officer at the residence of the Union Minister of Railways. He was found absent from duty on 3.8.2001. It is alleged that he misrepresented that he was on leave from 3.8.2001. This charge has to be read in the light of the fact that he had told his colleagues that he would be on leave while in fact, he was arrested in case FIR No.969/2001 on 3.8.2001 with respect to the offence punishable under Section 186/353/506/34 of the Indian Penal Code.

10. It has rightly been argued that nobody can foretell in advance that he along with his family members would be arrested. If he told his colleagues/fellow police men that he would be on leave, there is precious little for us to conclude that it was in contemplation of his being arrested. When such a thing cannot be contemplated as to whether a person would or would not be arrested, this aspect of the charge cannot be held to be proved.

11. The second part of the charge is that he was absent from duty from 3.8.2001 to 13.8.2001. The admitted facts are that applicant was admitted to bail on 6.8.2001.

As Ag

12. The plea offered by the applicant was that he was running post to pillar for securing bail of his family members. Be that as it may, the fact remains that after being admitted to bail on 6.8.2001, the applicant remained absent upto 13.8.2001. Therefore, it must be held that it is established that he remained absent without leave after he was admitted to bail till 13.8.2001. This conclusion is arrived at because of the fact that plea advanced was that when applicant was in custody, he could not join duty.

13. The last part of the assertions was that the applicant, on being arrested, did not inform the Department. In this regard, strong reliance was placed on the report of the inquiry officer where it is admitted that Telegram was sent to the Commissioner of Police.

14. The inquiry officer referred to Standing Order No.7 to support his finding that the applicant did not inform his official superiors in this regard. In the reply, it has been stated that the information given was basically a complaint against the police officers. Copy of the same is Annexure A5. It reads:

"To

Commissioner of Police
I.P.Estate
I.T.O. P.H.Q
Delhi.

INFORMING THAT INTERVENING NIGHT OF 2/3/B-2001 AT ABOUT 1.00 A.M. A.S.I. NAIN SINGH'S ENTIRE FAMILY INCLUDING WIFE SMT. PREM LATA AND BOTH SONS MUKESH KUMAR AND NAVEEN KUMAR HAVE BEEN FORCIBALLY PICKED UP FROM HOUSE BY SPECIAL STAFF OF MUKERJEE NAGAR ALONGWITH STAFF OF P.S. SULTANPURI ALL FAMILY MEMBERS BITTERLY HUMILIATED. A.S.I. NAIN SINGH AND HIS WIFE ADMITTED IN SANJAY GANDHI HOSPITAL UNDER SURVAILENCE OF POLICE AND BOTH SONS ARE IN CUSTODY OF POLICE

U. Ag

13

-6-

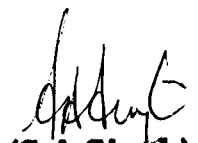
FOR NO CAUSE BUT DUE TO ENEMITY WITH
S.H.O. SULTANURI.


Nain Singh, S/o Bholu Ram
R/o E-203 Rajeev Nagar,
Begampur, New Delhi-41."

15. When such is the information given to the Commissioner of Police, it is obvious that it is by and large intimated that the applicant with his family members had been forcibly picked up from house by the special staff of Mukherjee Nagar. It does not give the information that the applicant had been arrested from a particular date and remained under custody till the specific date. When such information has not been given, it is patent that the arguments of the learned counsel so much thought of, will not cut much ice and merely because if the inquiry officer has recorded that Telegram was sent to the Commissioner of Police will not exonerate the applicant.

16. For these reasons, we dispose of the present application with the following directions:

- a) The impugned orders are quashed because part of the charge is not proved.
- b) The disciplinary authority would be well within his rights to pass a fresh order imposing any other penalty keeping in view the findings recorded above.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/