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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.871/2004

New Delhi, this the 20th day of December, 2004

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

Panna Lal
Ex. S.I. in Delhi Police
(PIS No.2960014)
r/o A-264, Pandav Nagar
New Delhi – 8.

... Applicant

(By Advocate: Sh. Anil Singal)

Versus

1. GNCT of Delhi through
Commissioner of Police
Police Head Quarter
IP Estate
New Delhi.
2. Joint Commissioner of Police
Armed Police, Police Head Quarter
IP Estate
New Delhi.
3. DCP (3rd Bn. DAP)
Vikas Puri,
New Delhi.

.. Respondents

**(By Advocate: Sh. Ahwani Bhardwaj proxy of Sh. Rajan
Sharma)**

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

The applicant was a Sub-Inspector in Delhi Police. He along with certain other police officials was detailed on escort duty over Under Trial Prisoner (for short 'UTP') Jalaluddin @ Rana @ Tafiq, who was taken to Rajkot, Gujrat for production before the concerned trial Court with respect to offences punishable under Sections 364-A, 365, 395, 397 and 120-B of Indian Penal Code besides under Sections 25/54/59 of Arms Act.

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2. The said UTP was also involved with respect to offences punishable under Sections 121, 121-B and 120-B of IPC besides under Section 25 of Arms Act and under Sections 3 and 4 of POTA. The applicant along with others departed after taking custody of the UTP and left for Rajkot in Porbander Express. On 10.8.2002, the applicant along with the guard members came back and reported that the said UTP escaped from their custody on the intervening night of 8/9.8.2002. The First Information Report with respect to the offences punishable under Section 224 of IPC was registered. A departmental enquiry was also entrusted to D.R.Birdi, ACP. On receipt of the report, a regular departmental inquiry had been initiated. The following charge had been framed:

"I, Raj Pal Singh, ACP III Bn. DAP/E.O. charge you S.I. Panna Lal No.D-2661. HC Harbir Singh No.2119/DAP, Const. Satbir Singh No.2773/DAP, Ct. Raimple Sharma No.2492/DAP, Ct. Naresh No.2928/DAP and Ct. Arvind Kumar No.11725/DAP, while posted in III Bn. DAP, on 08.08.2002 all of you were detailed on Escort Duty over under trial prisoner Jalaluddin @ Rana @ Rafiq s/o Mohd. Sultan r/o 30-A, Esconary Road, Mokh Market Dhaka, Bangladesh, who was taken to Rajkot (Gujrat) for production before the concerned trial court in case FIR No.591/2000 u/s 364-A/365/397/120B-IPC & 25/54/59 A.Act PS Mahasana Distt. Rajkot (Gujrat). The UTP was also involved in case FIR No.13/2000 u/s 121/121B/120B-IPC & 25 A.Act and 3/4 Pota PS Hazrat Nizamuddin Delhi. The excort guard under the supervision of you SI Panna Lal No.D-2661 departed vide DD No.57A.III Bn. DAP dt. 08.08.02 after taking the custody of UTP from PS Vikas Puri lock-up and boarded in Porbandar Express at 9 AM for Rajkot, Ahmedabad. On 10.08.2002 at 2.30 PM you, SI Panna Lal No.D-2661 along with the Guard members came back to Vikas Puri Lines and reported that UTP Jalaluddin @ Rana @ Tafiq s/o Mohd. Sultan had escaped from your custody in the intervening night of 8/9.08.02 under the jurisdiction of PS GRP Mehsana while in the way to Rajkot (Gujrat). A case FIR No.32/02, u/s 224-IPC was got registered at PS GRP Mehsana

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against the said UTP on the statement of you, SI Panna Lal No.D-2661. As per rule 29(1) of Delhi Police (Punishment & Appeal) Rule 1980, a searching departmental enquiry was ordered and entrusted to Sh. D.R.Birdi, ACP/III Bn. DAP, who conducted the same and submitted his report that the UTP escaped from the lawful custody due to negligence and carelessness of you SI Panna Lal No.D-2661, HC Harbir Singh No.2119/ DAP, Const. Satbir Singh No.2773/DAP, Ct. Rimple Sharma No.2492/DAP, Ct. Naresh No.2928/DAP and Ct. Arvind Kumar No.11725/DAP.

The above act on the part of you, SI Panna Lal No.D-2661, HC Harbir Singh No.2119/DAP, Const. Satbir Singh No.2773/DAP, Ct. Rimple Sharma No.2492/DAP, Ct. Naresh No.2928/DAP and Ct. Arvind Kumar No.11725/DAP amounts to grave misconduct, negligence, carelessness, indiscipline and dereliction in the discharge of your official duties which renders you punishment as envisaged in section 21 of Delhi Police Act, 1978."

3. The inquiry officer had recorded that the charge stood proved. The disciplinary authority taking stock of the facts and agreeing with the findings of the inquiry officer held that the UTP was classified as a High Risk Prisoner. He required high standard of vigil. The applicant was Incharge of the Escort party and accordingly, he was dismissed from service. He preferred an appeal, which was dismissed by the Joint Commissioner of Police on 16.12.2003. By virtue of the present application, the applicant seeks to assail the report of the inquiry officer, the order of disciplinary as well as the appellate authority.

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

5. The learned counsel for the applicant had strongly relied upon Rule 29 of Delhi Police (Punishment & Appeal) Rules. However, the respondents' learned counsel had brought the relevant file and on perusal of the same, the learned counsel for

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the applicant did not press his plea pertaining to the violation of the said Rule. Therefore, keeping in view the said statement at the Bar, it is unnecessary for this Tribunal to ponder with the said controversy.

6. Strong reliance further was placed on the decision of the **Punjab and Haryana High Court** in the case of **SARUP SINGH v. THE STATE OF HARYANA AND OTHERS**, 1983 (3) SLR 585. The Punjab and Haryana High Court was basically concerned with Rule 16.38 of Punjab Police Rules and thereupon held that the normal rule of prosecution and deviation from normal rule and directing to hold departmental enquiry would only be permissible in accordance with the provisions of the rule and District Magistrate must record reasons.

7. The said decision has little application in the present case as it was decided after the Delhi Police (Punishment and Appeal) Rules, 1980 having come into force. Therefore, the said contention must also fail.

8. Yet another argument advanced was that the inquiry officer had cross-examined the witnesses and in that process had become a prosecutor but no further right for re-examination had been granted.

9. The learned counsel relied upon the decision of this Tribunal in OA No.2827/2003 (**ASI Sher Singh v. Govt. of NCT of Delhi**), decided on 7.7.2004. The following findings were relied upon:

"8. We do not dispute the right of the enquiry officer to seek clarificatory questions. After all they are semi-judicial proceedings and the enquiry officer is not a silent spectator. However, if he intends to seek clarification, it should be so specifically indicated. The enquiry

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officer cannot start cross-examining the witnesses and then not permitting the delinquent thereafter a further right. It is this flaw which has crept into the proceedings which prompts us to conclude that in the facts before us, the impugned order cannot be sustained. The record reveals that the enquiry officer cross-examined Mohd. Hanif, applicant, PW-3 and even Sub-Inspector Amit Bikram from the CBI. The record does not reveal that the clarifications were being sought. It also does not reveal that further cross-examination in this regard was permitted."

10. In principle, there is no controversy that can be raised. However, each case has to be examined on its own facts. It is reiterated that for the purposes of clarification, the inquiry officer can ask questions from the witnesses. A perusal of the report of the inquiry officer reveals that he had questioned **ASI Bhupat Singh Pratap Singh** and he had replied that the police officials were not drunken and that the applicant was not in possession of arms. He had further admitted that the applicant had told him that UTP had escaped after pushing the constable when he went to toilet. Similarly, the **Sub-Inspector A.V.Parmar** had been asked certain questions by the inquiry officer. He had told that there was no smell of the alcohol from the mouth of the applicant.

11. It clearly shows that questions asked were in the nature of clarification after the UTP had escaped. In normal circumstances when the witnesses were asked certain questions by the inquiry officer, if did not even support the departmental version or any such plea. No prejudice would be caused in the facts of the present case, if re-examination was not permitted. Therefore, the decision in the case of **Sher Singh (supra)** will not help the applicant.

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12. In that event, it was highlighted that there was no evidence against the applicant.

13. We have already stated above that the applicant as well as the other Constables were on escort duty over the UTP. They had to face departmental action in such like matters. Direct evidence in the absence of any other person being available, is not possible but ^{circumstantial} ~~substantial~~ evidence would always be available. Adequate number of staff had been provided with arms and ammunition to take the UTP to Rajkot.

14. The lapse occurred on behalf of the applicant initially was that when two Constables were left at Ajmer Railway Station and subsequently, the carelessness is writ large from the fact that in the moving train the UTP was able to escape. Therefore, in judicial review, we find little ground to interfere in the findings arrived at in the departmental inquiry.

15. Great stress was laid on the fact that the penalty awarded is excessive. According to the learned counsel, the other co-delinquents had been given lesser penalty while the applicant had been dismissed from service.

16. In this regard, we are conscious of the fact that this Tribunal ordinarily will not interfere in the penalties that have been awarded unless it is excessive or shocks conscience of the Tribunal.

17. In the present case before us, the penalty indeed had been awarded keeping in view the role of the applicant. He was the In-charge of the Police party who was to take the UTP to Rajkot. It was his act and omission that two Constables could not accompany him from Ajmer and thereafter, being the In-charge, he

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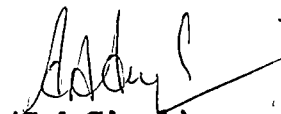
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had to face the consequences because the UTP had managed to escape in the moving train.

18. It has been pointed that UTP was a High Risk Prisoner and therefore, keeping in view that the applicant was In-charge of the party, he cannot escape the responsibility pertaining to his negligence. Resultantly, the plea must fail.

19. For the reasons given above, the Original Application being without merit must fail and is dismissed.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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