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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.980/2004
Miscellaneous Application No.2446/2004

New Delhi, this the 9th day of December, 2004

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

Inspector Pradeep Kumar
No.D-I/790
(RI/NW)
Delhi Police
New Delhi.

... Applicant

(By Advocate:Ms. Kanika Vadhera proxy for Mrs. Avnish Ahlawat)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
Police Headquarters, ITO
New Delhi.
 2. Commissioner of Police
Delhi Police
Police Headquarters
New Delhi.
 3. Joint Commissioner of Police
Northern Range
Delhi Police
Police Headquarters
New Delhi.
 4. Shri Satish Golcha
Commissioner of Police (West)
Delhi Police West District Rajouri Garden
New Delhi.
- ... Respondents

(By Advocate: Sh. Ram Kanwar)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant is an Inspector in Delhi Police. In the year 1999, he was posted as Officer-Incharge, Police Station Keshav Puram, New Delhi. On 18.12.1999 at about 3.30 AM, an information was received about a dead body of a male lying near electric

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transformer, Road No.37 Kanahiya Nagar, Tri Nagar Delhi. The information had been received at Police Post Shanti Nagar by Constable Kishor Kumar. Sub Inspector Raj Singh along with Constable Hari Krishan reached the spot where the dead body of a male aged about 30 years was found lying near the transformer.

2. The applicant being the Officer-Incharge of the Police Station, also reached the spot where the dead body was lying. The message was flashed to the Assistant Commissioner of Police of the Sub Division. The dead body was kept in the area for identification and later it was shifted to mortuary for preserving it for 72 hours. Since no information about the deceased was received, on 22.12.1999, autopsy on the deceased was conducted and the dead body was consigned to flames as unclaimed.

3. On 17.1.2000, the post mortem report had been collected by the Investigating Officer which gave cause of death as asphyxia due to smothering by manual gripping. A case with respect to offence punishable under Section 302 of the Indian Penal Code was registered. They investigated the matter and ascertained that alleged accused persons had been arrested who disclosed about the cause and reason for the death.

4. The applicant and Sub Inspector Raj Singh were suspended and departmental inquiry had been initiated against them on the ground of committing the gross negligence and omitting the investigation after recovery of the dead body. The following are the alleged dereliction of duty on the part of the applicant:

- "1. During Post-mortem, the black-tape fixed across the nose of the deceased was detected by the doctor and the same was

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handed over to the Keshav Puram Police. The hands and feet of the body were tied. From all the above facts, it is very clear that there were suggestive evidences of homicide. They over-looked all this and carried on casually with proceedings u/s 174 Cr. P.C.

2. Finger Prints of the body were not taken for sending the same to Finger Print Bureau for identification. No request was made to the doctor to remove the skin of the finger for the above purpose. Very unprofessional photographs were taken of the dead body by the IO and the SHO of PS Keshav Puram which would not have helped in any way to identify the dead body.
3. Not even for a minute visual examination of the dead body was conducted by the SHO and the IO as there is no mention of black-tape fixed on nose of the deceased (which were removed by the doctor and report prepared by SHO and IO).
4. The IO made no request to the doctor to preserve the viscera and clothes on the body.
5. The services of Crime Team and Dog Squad were not requisitioned.
6. The guilt and the card-board carton in which the body was packaged was not seized.
7. No independent witnesses were called at the time of inquest proceedings.
8. No public assistance was sought to get the body identified.
9. The dead body was hurriedly transported to the mortuary in a private vehicle."

5. Thus, the applicant faced a charge that he and the Investigating Officer committed gross negligence, carelessness and act of an un-professionalism in the enquiry investigation and made colluded efforts in the matter of recovery of a dead body. The inquiry officer had been appointed. The Assistant Deputy

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Commissioner of Police who was the Inquiry Officer concluded that the applicant had not exercised his official duties properly. He not only failed in guiding Raj Singh but also failed in discharging of his duties and thus acted in a manner unbecoming of a police officer. The charge, summary of which we have reproduced above, was held to have been proved.

6. As a result of the said findings, the disciplinary authority imposed the penalty of forfeiture of three years approved service permanently entailing proportionate reduction in pay to the applicant. The applicant had preferred an appeal which was dismissed by the Commissioner of police on 17/24.4.2003. By virtue of the present application, he seeks to assail the said orders.

7. The application is being contested.

8. After the matter had been heard, MA No.2446/2004 had been filed stating that on the date fixed when the matter was called, the Senior Counsel of the applicant was busy in another Court and request had been made to pass over the matter. It had been declined. It was, therefore, prayed that the Original Application may be re-listed for hearing.

9. Perusal of the record reveals that when the matter was listed before the Deputy Registrar on 12.8.2004, there was no appearance on behalf of the applicant. Before the Bench, even on 8.9.2004, there was no appearance on behalf of the applicant and on 11.10.2004, the applicant's counsel along with the respondents had prayed for an adjournment.

10. Not only that, it is being alleged that request was made to pass over the matter which was declined. This fact has been

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alleged but the affidavit filed is of the applicant who is not stated to be present on the relevant date to make any such request. Otherwise also, there is no ground as to why it is not indicated as to in which Court the counsel was busy and the assertions so made in the application are vague. The MA must fail.

11. In the application filed, it had been urged that if there is any dereliction of duty in the form of negligence which is being asserted against the applicant, this could be so opined by the Court which tried the offence as to if in fact there was a lapse in the investigation and omission by the applicant.

12. We find no reason to accept the said contention. Judicial findings can always be arrived at independently of the disciplinary proceedings. If there is any omission, negligence or misconduct which has been noticed, departmental proceedings can be initiated independently and, therefore, when they have to be done independently, the findings of the Court in this regard cannot be stated to be pre-requisite for initiation of the departmental proceedings.

13. Another limb of the plea of the applicant is that taking his assertions, it could be stated to be act of negligence and cannot be termed as misconduct in this regard.

14. Misconduct by itself is a term not defined and when an act is done unbecoming of a Government servant, in peculiar facts it can be taken to be misconduct.

15. In the present case, we have already reproduced above as to what were the omissions on the part of the applicant. Taking totality of the facts if a person ignored the fumbles and falters badly in official duty, it is unbecoming of a Government servant,

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particularly, when he is supposed to be careful and take necessary precautions while investigating the matter. In the peculiar facts, therefore, it must be taken to be a misconduct on the part of the applicant.

16. Yet, another plea taken has been that applicant had asked for the preliminary inquiry report which has not been supplied and, therefore, the proceedings should be quashed. In this regard, the matter has to be examined on the touch-stone of the fact if any prejudice is caused to the applicant or not. If the preliminary report has not been relied upon, as in the present case, the applicant cannot insist upon it. The evidence was produced during the inquiry and he had a right to cross-examine the same. Thus, the supply of the report of the preliminary inquiry would not be of any avail to float the said argument.

17. We are aware of the decision of the Supreme Court in the case of **S.K.SINGH v. CENTRAL BANK OF INDIA AND OTHERS**, (1996) 6 SCC 415. The Supreme Court held that if inquiry report is not supplied and no prejudice is caused, the proceedings cannot be held to be vitiated. An identical view had been taken by the Supreme Court in the case of **Managing Director, ECIL v. B.Karunakar [(1993) 4 SCC 727]** and in the case of **NARAYAN DATTATRAYA RAMTEERTHAKHAR v. STATE OF MAHARASHTRA AND OTHERS**, (1997) 1 SCC 299.

18. The main submission in this regard has been that pertaining to the lapses purported to have been committed by the applicant, he could do only precious little and that due care and caution had been taken. We find that in the facts it could not be so. We reiterate some of the assertions that had been made and

already reproduced above that (1) during Post-mortem, the black tape was found fixed across the nose of the deceased. It was only detected by the doctor but the applicant did not care to detect the same. That shows that there was no minute visual examination of the deceased. (2) Whenever a person is investigating a serious offence, he should not only take care but being the Officer-Incharge also can direct the Investigating Officer to take the Finger Prints. The applicant took no steps. No request was even made to the doctor to remove the skin of the finger. (3) It is true that it is for the doctor to preserve the viscera and clothes but such a request could have been made, which, in fact, had not been made. (4) The charge further revealed that the services of Crime Team and Dog Squad were not requisitioned. Certain articles lying near the deceased, namely, viscera, etc. were not taken into possession. It is a basic fact that such articles always are required to be taken into possession besides other factors, which the Inquiry Officer has found to be a dereliction of duty.

19. It is these facts which prompt us to conclude that the pleas offered that applicant could not have prevented ~~with~~ the same or that the tape, etc could not be detected, holds little water because it only shows that care and caution had not been taken.

20. No other plea has been offered.

21. For these reasons, the Original Application being without merit must fail and is dismissed.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman