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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.983/2004

Tuesday, this the 12th day of October 2004

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

Jawahar Singh
Constable in Delhi Police
(PIS No.28890191)
R/O P-11, FRRO Police Line
Safdarjung Airport,
New Delhi-3

..Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
Police Head Quarters,
IP Estate, New Delhi
2. Joint Commissioner of Police
(Southern Range), PHQ
IP Estate, New Delhi
3. Additional DCP (South Distt.)
Through Commissioner of Police
Police Head Quarters,
IP Estate, New Delhi

..Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER (ORAL)

Justice V.S. Aggarwal:

The applicant by virtue of the present application seeks to assail the order passed by the disciplinary authority dated 2.11.2001. The disciplinary authority had passed the following orders:-

"..... As regards charge No.2 that the matter was not reported to any senior officer, neither any corresponding entry was made in the Daily Diary, I am of the considerate opinion that the charge is proved by Enquiry officer beyond any reasonable doubt and I hold them guilty of not informing the superior officers and committing serious lapses in departmental procedures. Hence in view of the above mentioned facts and circumstances and the findings of the Enquiry officer, I award the major punishment of forfeiture of three years of approved service for a period of three years, in the time scale of pay without cumulative effect to all the





three constables. Accordingly, the pay of Ct. Gulab Singh, Jawahar Singh and Amir Khan is hereby reduced from Rs.3575/- PM, Rs.3350/- PM and Rs.3725/- PM to Rs.3500/- PM, Rs.3425/- PM to Rs.3200/- PM respectively. They will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will not have effect of postponing their future increments of pay. The suspension period of Ct. Gulab Singh from 5.10.99 to 4.6.2000, Ct. Jawahar Singh from 13.11.99 to 4.6.2000 and Ct. Amir Khan from 13.11.99 to 4.6.2000 is decided as period not spent on duty."

He preferred an appeal against the same, which has been dismissed.

2. The short argument which requires consideration is that according to the applicant he has been found to have derelicted in duty in not informing the senior officers about an incident nor making any Daily Diary entry in this regard. It has been contended that that was ^{not} the charge framed against the applicant and, therefore, he could not have been held to have derelicted in his duty in this regard.

3. Some more facts on this count would precipitate the question in controversy.

4. Summary of allegations dated 8.12.1999 had been served on the applicant and two other persons stating:-

"Summary of allegation:

It is alleged against you Constable Gulab Singh No.2031/SD, Const. Jawahar Singh, No.8537/SD and Constable Amir Khan No.593/SD that while posted at PS Okhla on 27.6.99 an performing duty at M/Cycle No. DLISL-5037 SM-26 and picket duty near ESI Hospital Okhla respectively you constable Gulab Singh No.2031/SD and Const. Jawahar singh No.8537/SD stopped Tata 407 No.DLIL-B-1947 being driven by one Omvir Singh and beat him. You both further took him to picket near ESI hospital, Okhla where const. Amir Khan No.593/SD was already present. You const. Gulab Singh No.2031/SD informed the owner of said Tata 407 on telephone and released it later to Prem and Mangat Ram without bringing the facts to the knowledge of any senior officer or recording about it in the daily diary. Thus, you Constable Gulab singh No.2031/SD, Const. Jawahar singh No.8537/SD, Const. Amir Khan No.593/SD illegally detained, harassed and beaten driver Ombir Singh and released Tata 407 No.DLIL-B-1947 with malafide intention.

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The above acts on your part, i.e., constable Gulab Singh No.2031/SD, Const. Jawahar Singh No.8537/SD and Const. Amir Khan No.593/SD amounts to malafides, dereliction in official duty, gross misconduct, carelessness and thus unbecoming of a police officer which renders all of you liable for departmental action under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980."

5. Even during the inquiry, the charge framed was on the same lines. It is on the strength of the same that the above-said argument was being urged that there was no charge against the applicant that he failed to inform the concerned senior officer or make the daily diary entry thereto.

6. Learned counsel for respondents while controverting the said contention contends that the applicant contested the matter fully aware of the nature of the assertions and, therefore, no prejudice is caused to him. He further urged that during the course of the inquiry, no such defence had been taken and consequently, it is too late in the day for the applicant to raise such a plea.

7. We have carefully considered the said submissions.

8. The Delhi Police (Punishment & Appeal) Rules, 1980 have been framed in exercise of powers conferred by Section 147 (1) & (2) of Delhi Police Act. Rule 16 of the above said Rules prescribes the procedure in departmental inquiries. In this regard, the procedure clearly envisages that firstly the statement has to be prepared summarizing the misconduct against the alleged delinquent and thereupon under sub rule (iv) to Rule 16 when the evidence in support of the allegation has been recorded a formal charge has to be drawn, explaining the same to the delinquent.

9. The purpose of framing of charge is that the concerned official should know what is the allegation against him. The framing of the charge is based on fair play because the person has to meet the nature of assertions that are formulated and incorporated in the charge.

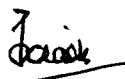
10. We have already reproduced above the summary of allegations and the charge that was drawn on the same lines. It clearly reveals that there are two parts of the same. The first part, which pertains to illegally detaining,




harassing and beating the tempo driver, had not been proved. The second part of the assertion, as is apparent from the plain language of the charge, was against Constable Gulab Singh in not reporting the matter to the senior officer and not making the daily diary entry regarding the incident. Once there was no such charge against the applicant, indeed, irrespective of what the defence was offered, the State had to prove the charge. It could not go beyond what was alleged. A fact not mentioned in the charge, indeed, should not have taken to have been proved and action taken on that behalf. In this view of the matter, to contend that no prejudice is caused to the respondents or that he had taken any other defence, would be of no much consequence. The said principle that a person contests the matter fully aware of the nature of allegations and thus cannot contend that prejudice is caused to him, cannot be made applicable in those matters where there is no allegation against the delinquent, which are not even incorporated in the formal charge. Resultantly, in the facts of the present case, we have least hesitation in rejecting the pleas of the respondents.

11. Consequently, we allow the present application and quash the impugned orders. However, we make it clear that pertaining to the said facts, the respondents, if permissible in law and deemed appropriate, may take further action. The applicant would be entitled for the consequential benefits.

12. Since we are allowing this petition on the arguments referred to above, it becomes unnecessary for this Tribunal to express on the other pleas.


(S. K. Naik)
Member (A)


(V. S. Aggarwal)
Chairman

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