

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1381 of 1992

New Delhi this the 9<sup>th</sup> day of October, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)  
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

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Balbir Singh  
S/o Shri Bahadur Singh  
C/o Gulshan Sweet Shop No. 106,  
G.T.B. Nagar, Kingsway Camp,  
Delhi-9.

... Applicant

By Advocate Mrs. Meera Chhibber.

Versus

1. Commissioner of Police Delhi,  
Delhi Police Headquarters,  
M.S.O. Building, I.P. Estate,  
New Delhi.
2. Additional Commissioner of Police,  
C.I.D., Delhi Police Headquarters,  
Indra Prastha Estate,  
M.S.O. Building,  
New Delhi.
3. Deputy Commissioner of Police  
(Crime & Railways),  
Delhi Police Headquarters,  
M.S.O. Building,  
Indraprastha Estate,  
New Delhi. .... Respondents

By Advocate Shri Rajinder Pandita.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

By the impugned order departmental proceedings were initiated against the applicant, Head Constable, in Delhi Police and penalty of temporary forfeiture of one year's service without any effect on his increment was imposed on him, and his appeal was also rejected. The charge against him was that he got mixed up with the forged driving licence racketeers with ulterior motive due to which the persons involved in the preparation of these fake licences had gone underground. The Enquiry Officer

found him guilty of the charge.

(29)

2. Applicant challenged the impugned orders on the following grounds:-

(i) The enquiry was started without obtaining prior approval of competent authority under Rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980.

(ii) Independent witnesses were never examined.

(iii) Even certain witnesses viz. one Nutan Dass and Charanjit Singh alias Bitoo whose information was relied upon were neither cited as prosecution witnesses nor examined.

(iv) The material witness Bitoo, who was produced as defence witness was not interrogated during investigation, but deposed and denied having given any information.

(v) Suspension period was not treated as duty which was not in consonance with Rule 27 of the Rules ibid.

(vi) The orders of the disciplinary and appellate authorities were non speaking orders and without application of mind.

3. Respondents submit that the applicant unofficially visited the area of Police Station Subzi Mandi without being assigned duty there, and this was established in the enquiry. The charge of corruption was,

however, not established, and in view of this, the penalty of forfeiture of one year's service was imposed. They also aver that since no criminal case was imposed on him, permission for departmental proceedings under Rule 15(2) was not required. As there was *prima facie* evidence, no preliminary enquiry was considered appropriate. The respondents also assert that in the enquiry alleged enmity of the ACP and certain officials against the applicant was not established.

(30)

4. We have heard the learned counsel for the parties at great length and have perused the record including records of the departmental proceedings.

5. In the enquiry, SI Satish Rathi, PW-I was examined. In the cross-examination, he stated as follows:-

"On 2.7.1990, I came to know that 5/7 days before and even after that, HC Balbir Singh and Narpal Singh have visited Mandi due to which the forged driving licence racketeers had gone underground and because of this the raid of Crime branch could not succeed and about that I have mentioned in C.D. No. 19, dated 2.7.1990 and C.D. No. 19.7.1990."

6. To another question whether any body told him that the HC Balbir Singh (i.e. the applicant) and Ct. Harpal Singh met with forged driving licence racketeers with ulterior motive or was it his own observation, he answered as follows:-

"It was my own observation. I came to know that Balbir Singh and Narpal Singh visited unofficially and met with forged driving licence racketeers, without bringing it into the notice of

(L)

senior officers".

(31)

7. We find that the charge was that he was mixed up with the racketeers and with ulterior motive due to which the persons involved in the preparation of forged licences has gone underground. The persons who were supposed to have handed over the persons involved to the applicant were crucial witnesses, but they were not named in the enquiry as witnesses nor were they produced or examined. One of them, however, was examined as defence witness. He denied having known or met the applicant any time before. He also denied having anything to do with the investigation of the case or discussed anything regarding the driving licence racketeers and had not talked to SI Satish Rathi. The prosecution did not cross-examine him at all.

8. From the foregoing, it is clear that no evidence is available to substantiate the charge. The Enquiry officer has, however, returned the finding that it was established that the applicant unofficially visited the areas of Subzi Mandi without being deployed and that he allowed the culprits to go away 5/7 days prior to the raid.

9. We are inclined to agree with the contention of the learned counsel for the applicant that apart from the statement of PW-1 there was no evidence whatsoever thrown up during the enquiry to show that the applicant had gone to Subzi Mandi or mixed up with racketeers with ulterior motive. In the cross-examination of PW-1, he admitted that he had come to know that the applicant visited Mandi

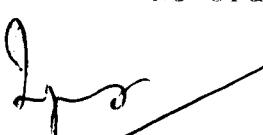
(32)

but did not mention in D.D. 2 that the applicant met with Nutan Dass and Bitoo who were stated to have handed over the culprits. Thus, in our view, the evidence of PW-1 and cross-examination did not **even prima facie** establish any evidence underlying the charge.

10. We are, therefore, of the considered view that the Enquiry Officer's findings is based on no evidence and is perverse. We also find that the disciplinary and appellate authorities have simply agreed with the findings of the Enquiry Officer without proper appraisal of the findings of the Enquiry Officer, and of the evidence on record and there is no evidence of the application of mind.

11. In view of the above, the impugned order cannot be sustained. We accordingly set aside the impugned orders. The application is allowed and the applicant is entitled to all the consequential benefits.

No order as to costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

  
(MRS. LAKSHMI SWAMINATHAN)  
MEMBER (J)

Rakesh