

2 copies

In the Central Administrative Tribunal
Principal Bench: New Delhi

7

OA No.1875/92

Date of decision: 16.04.1993.

Shri Gurcharan Singh

...Petitioner

Versus

Commissioner of Police & Anr.

...Respondents

Coram:-

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman(J)
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner Shri Shankar Raju, Counsel.

For the respondents Ms. Ashoka Jain, Counsel.

To be referred to the Reporter or not?

Judgement(Oral)
(Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman)

The order dated 26.6.1992 passed by the Deputy Commissioner of Police, I.G.I. Airport, New Delhi, dismissing the petitioner from service is being impugned in the present application.

2. The petitioner was on 9.6.1992 posted as a Head Constable at Palam Airport. A F.I.R. No.16/92 was lodged on 10.6.92, alleging therein that the petitioner had committed an offence under Section 391/34 of Indian Penal Code. The allegation, in substance, was that he had robbed one Shri Kulbhushan son of Sh. Ram Saran, resident of 3802, Gali No.5, Kanhiya Nagar, Tri Nagar, Delhi. On the basis of the said F.I.R. he was arrested and was enlarged on bail on 16.6.1992.
3. In paragraph-2 of the impugned order it is recited that the complainant and the witnesses participated in the Test Identification proceedings conducted in the Tihar Jail. They, however, failed to identify the petitioner. Hence, the petitioner was granted on bail on 16.6.1992.

5

4. We have read the impugned order more than once. On the basis of the allegation made in the F.I.R. alone the Deputy Commissioner of Police has come to the conclusion that the petitioner is a person of deprave and desperate character. To put it differently, the Deputy Commissioner of Police has recorded a finding that the petitioner really robbed Shri Kulbhushan. Apart from a reference to the F.I.R., there is not even a whisper of any corroborative material of probative value which can entitle the officer concerned to come to the conclusion that the petitioner is guilty of misconduct attributed to him. The failure of the complainant and the other witnesses to identify the petitioner renders the rule of preponderence of probability inapplicable to the case in hand.

5. In paragraph-4 it is stated that notwithstanding the fact that the criminal proceedings will take place against the petitioner, a strict departmental view is called for against him under the conduct Rules. The circumstances of the case are, however, such that holding of an enquiry against him is not reasonably practical because it is not uncommon in such cases to find out the complainant and the witnesses turning hostile due to fear of threatening or intimidating the witnesses who will come forward to give evidence against him in the departmental enquiry are common tactics adopted by policemen.

6. We have already indicated that the complainant and the other alleged eye witnesses were available to the department and that is why they were taken to the Tihar Jail for identifying the petitioner there. The reasons given in paragraph-4 for dispensing with the enquiry and for taking advantage of the provisions of clause (b) of the second

8

9

proviso to Article 311 (2) of the Constitution as well as Rule-17 of the Delhi Police (Punishment and Appeal) Rules, 1980 are too general and vague and are non-existent so far as the facts of the instant case go. We may repeat that the complainant and the witnesses were available to the department.

7. Rule 17 also provides that where the procedure prescribed for holding disciplinary proceedings is dispensed with, disciplinary authority is still to consider the circumstances and pass such order as it may deem fit. It is implicit in this rule that the disciplinary authority must apply its mind objectively and based its findings on some material. Surely, the allegation made in the F.I.R. behind the back of the petitioner cannot be the sole basis of the findings of the disciplinary authority.

8. The impugned order is not sustainable. It is quashed. It follows that the petitioner shall be entitled to be reinstated in service and will be entitled to back wages.

9. There shall be no order as to costs.

Sukhpal
(I.K. RASGOTRA)
MEMBER(A)

Sky
(S.K. DHAON)
VICE-CHAIRMAN(J)

San.