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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

(13)

20.9.92

O.A. No.2287/92

Dated:

Sulekh Chand

Applicant

Vs.

Delhi Administration & Anr. Respondents

Shri B.B. Raval, Counsel for the Applicant  
Ms. Maninder Kaur, Counsel for the Respondents

CORAM  
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1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT

(by Hon'ble Mr. B.K. Singh, Member (A))

Heard the learned Counsels, Shri B.B. Raval for the applicant and Ms. Maninder Kaur for the respondents and perused the records of the case and the D.E. file Part I and II .

2. The O.A. 2287/92 has been filed against order contained in letter No.7589-92/SB(TP) dated 4th August 1992 and also against order No.F.7/4710-14/SB(SR) dated 30th July, 1992. The 30th July letter contains the order passed by Additional Commissioner of Police, Delhi Southern Range, Shri S.K. Kain rejecting the appeal of the applicant. The 4th August letter is a mere acknowledgment of the letter of Additional Commissioner of Police rejecting the appeal. This letter has been issued over the signature of Shri O.P. Tiwari. Surprisingly the order of dismissal has not been assailed. The rejection of the appeal by the Additional Commissioner is marked as annexure 'A'.

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3. The applicant joined service in Delhi Police as Constable on 3rd November 1962 and was promoted as Head Constable on 30th August 1980 and Assistant Sub inspector of Police on 30th December 1988. He was confirmed as Constable in 1971 and as Head Constable in 1984. He was also allotted Quarter No. S-E/3, Police Colony, Andrewsganj, New Delhi on 14.2.72 which he continues to occupy as a result of interim stay in MP No.1998 of 1993 in which the respondents were directed not to proceed further with the notice dated 28.9.92 (annexure MP-I). A perusal of the order sheet will indicate that as his right to continue in the government quarter was snapped after the relationship of master and servant became extinct after the dismissal order. The extension lapsed on 8.7.93 but only on the request of the learned counsel for the applicant it was further extended and status quo continues.

3. While posted as ASI at Police Outpost Nehru Place, Kalkaji Police Station, Delhi, he was entrusted with a complaint dated 26.7.90 by one Shri A. Ghosh, Partner, Ghosh & Rao, Chartered Accountants, 301, Saraswati Niwas, Nehru Place, New Delhi regarding theft of a computer and other articles.

4. It has been stated that the applicant neither registered any case nor did he take any action on the complaint petition. When the complainant asked for a copy of the FIR in order





to get his claim settled with the Insurance Company, he was furnished with a forged copy of FIR No. <sup>235/90 registered</sup> ~~235/90~~ dated 25.7.90 which had been registered at Kalkaji PS under Section 457/380, IPC. The complainant in this case was Shri Tushar Kothari. The relevant record of this case along with the original FIR were shown as untraced in Kalkaji PS. It has been further alleged that the applicant obtained the said untraced file from the Police Station Records Room through Constable Babu Lal, detached the report of Tushar Kothari from it and also made interpolation in case diary No.2 pertaining to this case. The case diary of the case and the FIR dated 25.7.90 had been registered by one Jagmal Singh who was then posted at Kalkaji PS and was ~~10~~ of this case.

5. As a result of non-registration of FIR on 26.7.90 and also on account of forgery committed by him and also on account of interpolation in case diary No.2 preliminary inquiry was held against the ASI of Nehru Place Outpost and the charges were established against him. The preliminary inquiry was held under Section 15 of Delhi Police (Punishment & Appeal) Rules 1980 and regular departmental proceedings were ordered to be conducted against the applicant for major penalty under Section 21 of the Delhi Police Act 1978, with the approval of the Additional Police Commissioner, Shri S.K. Kain, Southern Delhi Range, vide letter

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No.1261-64 P.Cell (Vig.) P.3 dated 2.4.91. The DCP, South Delhi under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules 1980 vide his Memo No. 16(23)(91) S.P. (P-2) P.112-3112-3114 dated 12.1.91 entrusted this inquiry to Departmental Enquiry Cell of Vigilance. The DIG Vigilance Cell on receipt of the relevant file appointed Inspector Shakti Singh and on his transfer, Inspector Shankar Singh to hold the departmental inquiry proceedings against the applicant.

6. We have carefully gone through the departmental inquiry proceedings contained in D.E. file Part-I ~~and~~ II and found that Shri Shankar Singh after conducting detailed departmental inquiry proceedings submitted his findings holding the applicant guilty of the charges levelled against him. The perusal of the departmental file also reveals that a copy of findings of E.O. were given to the applicant giving him full opportunity to make his representation/submission in regard to the findings of the E.O. to which the applicant submitted his reply and his written statements. The Disciplinary Authority considered the facts and circumstances of the case and after perusal of all the documents, the D.E. file and other relevant ~~matters~~ <sup>materials</sup> connected with the inquiry came to a conclusion that the applicant acted in defiance and flagrant violation of statutory provisions and brought a bad name to a

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disciplined force as its Member and as such was unfit to be retained in service and accordingly the applicant was dismissed on 26.12.91. The applicant filed an appeal to the appellate authority on 14.1.92 which was duly considered by him and rejected on 30.7.92. This is the cause of action for filing this OA No. 2287/92. A perusal of Delhi Police (Punishment and Appeal) Rules 1980 indicates that a new rule has come in <sup>as a</sup> substitute of the old rule which reads as follows:

"If the disciplinary authority having regard to its findings in all the charges and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Rule 5 (i to vii) should be imposed on the Police Officer, it shall make an order imposing such penalty and it shall not be necessary to give the police officer any opportunity of making representation on the penalties proposed to be enforced."

7. In this case the disciplinary authority had given an opportunity to make representation before imposing the penalty. Similarly during the departmental inquiry all relevant documents, papers and list of witnesses were furnished to the applicant and he was given full opportunity to cross examine the witnesses. Finally the order of dismissal based on the findings of E.O. had been passed by the

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competent authority which was sustained by the appellate authority after due consideration of the representation filed by the applicant. The appellate authority passed the final order under Rule 17 of the Delhi Police (Punishment & Appeal) Rules 1980.

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8. Record in the Departmental Inquiry, as envisaged under Rule 97, has been maintained carefully. It contains (a) order sheet of upto date proceedings, (b) statement summarising the alleged misconduct, i.e. summary of allegations (c) statements of PWs (d) charges (e) statements of cross examination of witnesses (f) statement of accused police officer (g) list of exhibits (h) findings of the E.O. (i) show cause notice for punishment issued to the accused police officer (j) final order of the disciplinary authority, and (k) order rejecting appeal etc. All these details have been maintained in para 1 and 2 of the D.E. file. Thus it would be seen that there is no infirmity so far as procedure laid down for conducting the departmental proceedings is concerned. Once the major premise regarding misconduct is accepted, the rest follows logically and conclusion of dismissal is entailed as a natural corollary on the basis of the findings of the E.O.

9. However, it is true that S.I. Ranbir Singh has stated that he visited the premises of Ghosh & Rao, Chartered Accountants located in

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301, Saraswati House, Nehru Place, along with ASI Sulekh Chand, the applicant. This fact has also been corroborated by the complainant, Shri A. Ghosh. Shri Ranbir Singh has stated that on return from the premises he had asked the applicant to register an FIR and also to send for the Crime Detection Team to look into this burglary and stated that he had also issued instructions to the applicant to give a copy of the FIR to Shri Ghosh in order to enable him to get his claim settled with the General Insurance Company for the losses suffered by him as a result of the burglary. Shri A. Ghosh has also stated that when he submitted a copy of the FIR handed over to him by Shri Sulekh Chand to the General Insurance Company, he was shocked to learn from the General Insurance Company that it was a fake FIR since it was dated 25.7.90 and the complainant in this case was Shri Tushar Kothari and as such there was no question of settling the claims on the basis of this forged FIR. Mr. Ghosh has stated that he visited Kalkaji P.S. and met the Inspector Shri O.P. Swami and stated full facts before him. Shri O.P. Swami and Shri Ranbir Singh during their examination-in-chief and also during the course of cross examination have confirmed that the applicant on the basis of the evidence of Babulal had carried away the case record of FIR 235/90 lodged by Shri Tushar Kothari and had also carried away the case diary No.2 and the finger prints also point to no one else except the applicant regarding the

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detachment of the original FIR of Shri Tushar Kothari and making a forged copy of it for handing over the same to Shri A. Ghosh. The interpolation in Diary No.2 must have been done as a cover-up operation for forgery and also for dereliction of duty in not registering the FIR in spite of instructions of Shri Ranbir Singh, S.I., In-charge of Police Out Post, Nehru Place.

10. It was argued by the learned counsel for the applicant that Babulal's testimony that he handed over FIR and Case Diary No.2 to the applicant cannot be relied upon since the signature of the applicant was not taken by Babulal in the general register and as such Babulal's evidence is no evidence. Babulal has said in his evidence that ASI Sulekh Chand, the applicant, demanded relevant FIR and the case diary and these were handed over to him without obtaining his signature in general register. In Police, army and also in other para-military forces and in Government offices, many transactions take place on mutual trust and the junior officer normally does not ask his senior to put his signature in writing while taking away some record. There is only Jagmal's statement which indicates that the forged copy of FIR and interpolations were not in the hand-writing of the applicant, Sulekh Chand, since he recognised his hand-writing.

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11. The learned counsel for the applicant argued that the evidence of Jagmal that the forged copy of FIR and interpolations were not in the hand-writing of Sulekh Chand, should have been relied upon by the E.O. and Disciplinary Authority. Even presuming that this statement is correct, this does not give a conclusive proof of the fact that Sulkh Chand had no hand in forging a copy of the FIR and making interpolations in Diary No.2.

Once it is proved that he had taken the relevant FIR and Case Diary No.2 from Babulal, it is also possible that some other person in the PS or in the Outpost or any friend of the applicant could have forged the FIR and also made interpolations in Case Diary No.2 at the behest of Sulekh Chand, the applicant. Once the evidence of Babu Lal is believed that he handed over the original FIR of case No.235/90 and also the case diary No.2 to the applicant, the irresistible presumption would be that he must have either himself forged Jagmal's signature or must have got it forged through somebody else because the relevant documents were in his possession. The applicant could not shake the confidence of Babu Lal during the cross examination regarding handing over of the original FIR of Tushar Kothari and the case diary No.2.

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12. The learned counsel Shri Raval argued that there were inconsistencies in the evidence of various police officers during examination and cross examination and he argued that Shri A. Ghosh has not categorically stated that he handed over the complaint petition to Sulekh Chand. In his evidence he only stated that he gave it to the duty officer but who the duty officer was is not indicated and as such benefit of doubt should have been given to Sulekh Chand. Even presuming that someone else was on duty and it was not Sulekh Chand, the fact that he visited the premises, 301-Saraswati House, along with SI Ranbir Singh, has been admitted by Shri A. Ghosh and the applicant also. S.I. Ranbir Singh has stated that on return from the premises he gave specific instructions to ASI Sulekh Chand to register FIR, call for the Crime Detection Team and to supply a copy of the FIR to Shri A. Ghosh in order to get his claim settled with the General Insurance Company. It is also admitted that Shri A. Ghosh was furnished with a copy of FIR No. 305/90 standing in the name of Shri Tushar Kothari. This was detected by the General Insurance Company where this was filed. This FIR was dated 25.7.90 and the burglary in 301, Saraswati House had taken place on 26.7.90 and not on 25.7.90. This version of S.I. Ranbir Singh has also been supported by Inspector and Officer I/C, Shri O.P. Swamy of Kalkaji P.S.

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There is no evidence to show that S.I. Ranbir Singh did not endorse a copy of the complaint to the applicant but kept it in his pocket as argued by the learned counsel for the applicant. The learned counsel argued that there was a big conspiracy to get rid of the applicant. The records do not show the trappings of any conspiracy. No charge of bias or prejudice has been raised by the applicant during the course of examination-in-chief or cross examination and therefore he is barred by the law of estoppel to raise it after he was dismissed from service. Taking a total view of the facts and circumstantial evidence in this case, it is clear that the charge against Shri Sulekh Chand, the applicant, in not registering the FIR in spite of instructions from his superior officer, i.e. S.I., in itself was a grave misconduct. This was further compounded by getting a forged copy of FIR No.235/90 dated 25.7.90 supplied to Shri A. Ghosh after getting it stamped by the Constable on duty.

It was further argued by the learned counsel that denial of the assistance of hand-writing expert had been disadvantageous to the applicant and was against the principles of natural justice. It is a fact that the assistance of hand-writing expert was not taken by the police authorities because it was presumed

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that once the original FIR at Kalkaji P.S. No.235/90 dated 25.7.90 and the the case diary No.2 were in possession of the applicant, as stated by Babulal even during the examination-in-chief and during the cross examination, the presumption is that if he did not forge it, he must have taken assistance of someone else to do this job for him and it would have been futile for the higher authorities to call the hand-writing expert to verify the fact as to who forged Jagmal's ~~Singh's~~ signature on the copy of the FIR given to Shri A. Ghosh. Similarly, it would have been difficult for police authorities to ascertain the fact of interpolation and manipulation in case of Diary No.2. It is only Sulkeh Chand who could tell the police whose services he utilised for doing this job for him.

Further his visit to the premises of A. Ghosh & Rao on the plea of investigation when no FIR had been registered by him in spite of instructions of S.I. Ranbir Singh, is something which baffles reason. He also did not call the crime detection team for looking into the burglary as instructed by S.I. Ranbir Singh. We fail to understand the behaviour of Shri Sulekh Chand, the applicant, and his culpability and complicity in the various transactions are beyond doubt.

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13. The learned counsel for the applicant during the course of arguments could not rebut the charges levelled against the applicant. The circumstantial evidence in this case also goes against the applicant, Sulekh Chand. Since the orders of the dismissal have been passed by the appropriate authority under Delhi (Punishment & Appeal) Rules, 1980 after following the correct procedure as reflected in the departmental inquiry file Part I and II, we do not find any flaw in the procedure or in the findings arrived at by the appropriate authority in dismissing the applicant from service.

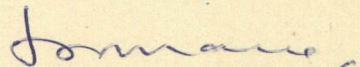
13. When an order of removal from service is passed under specific rules on the basis of grave misconduct there is hardly any scope for interference by the Courts unless it is shown that the order of removal is malafide or is based on collateral grounds. No malafide or malice has been attributed to any police officer. It is true that in general the learned counsel for the applicant did make an attack on the style of the functioning of the Police Department as a whole. The order of removal from service by the competent authority has not been assailed. It is only the order rejecting the appeal that along with communication of that order have been made the subject matter of this O.A. and the relief also prayed for is to set aside these two orders. One is the order of Appellate Authority, Mr. S.K. Kain and the other is the order



communicated by Mr. Tiwari, DCP, South Zone, to the applicant. It is true that when an appeal is filed the order of the appellate authority merges with the order of the disciplinary authority, but it would have been better to assail the order of dismissal as passed by the competent authority. This unfortunately has not been done in this case. There is no relief sought to quash the dismissal order passed by the Disciplinary Authority.

In view of facts and circumstances of the case, the application is dismissed as devoid of any merit and substance. The interim order regarding retention of government quarter also stands vacated. There will be no order as to costs.

  
( B.K. Singha )  
member (A)

  
( J.P. Sharma )  
Member (J)

v p c

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