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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2356/92
T.A. No.

199

DATE OF DECISION 16.1.98

Shri Rajbir Singh

Petitioner

Shri Shyam Babu

Advocate for the Petitioner

Vicusus

Chief Secy. DELHI Admn. & Ors.

Respondent

Ms Jyotsna Kaushik, 1dcounsel

Advocate for the Respondent

through proxy counsel Sh. Ajesh Luthra

CORAM

The Hon'ble Shri. S. R. Adige, Vice Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? *Y*

2. Whether it needs to be circulated to other Benches of the Tribunal?

Lakshmi S
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 2356/92

New Delhi this the **16** th day of January, 1998

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Rajbir Singh,
S/o late Shri Zile Singh,
R/o Qr. No. 1187, Block No. 50,
DDA Flats, Kalkaji,
New Delhi. Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-54.
2. Deputy Commissioner of Police,
(South West District),
New Delhi.
3. Addl. Commissioner of Police,
(Southern Range), Police Headquarters,
New Delhi. Respondents.

By Advocate Shri Ajesh Luthra proxy for Mrs. Jyotsna Kaushik.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who is working as Sub Inspector in the Delhi Police, is aggrieved by the order passed by the respondents dated 28.1.1992 by which a punishment of forfeiture of two years approved service permanently entailing proportionate reduction in his pay by one stage from Rs.1700/- p.m. to Rs.1640/- p.m was imposed on him during which period he will also not earn increments of pay and the order dated 20.7.1992 passed by the appellate authority rejecting his appeal.

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2. The respondents have taken disciplinary proceedings against the applicant on three charges (Annexure 'D'). The applicant has submitted that framing of the charge was itself arbitrary and without any material on record. After examination of the witnessess and evidence on record, the Inquiry Officer gave his report on 11.11.1991. He found that Charges 2 and 3 were not substantiated at all whereas Charge No. 1 which related to the investigation conducted by the applicant in case FIR No. 165/90 u/s 7/10/55 E.C. Act, PS Naraina and making of certain remarks in C.D. No. 1, para 15 and 17 against SHO/Naraina amounts to violaton of Rule 11 of the Delhi Police (General Condition of Service) Rules, 1980 (hereinafter referred to as 'the 1980 Rules') and thus he contravened PPR 14.8 were held to have been substantiated. For this reason, the impugned punishment was imposed against the applicant for the act of misconduct.

3. Shri Shyam Babu, learned counsel for the applicant, has submitted that on two main grounds the application may be allowed and the impugned orders quashed and set aside, namely, (1) that the charge No. 1, referred to above, is vague as the remarks which led to the disciplinary action have not been stated and, therefore, the applicant was not in a position to reply to the same effectively. He has also submitted that there was no misconduct on the part of the applicant either under Rule 11 of the 1980 Rules or P.P.R. 14.8. He has also relied on Section 172(1) of the Code of Criminal Procedure, 1973 to show that every police officer making an investigation is required to enter his proceedings day by day of the investigation, in a diary setting forth the time at which

the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation. The learned counsel, therefore, submits that what has been stated as Charge No. 1 is that while the applicant was investigating the case FIR No. 165/90 under Sections 7, 10 and 55 of the E.C. Act, PS Naraina, he had noted certain remarks in the diary which were statements made by certain accused persons themselves. The learned counsel has submitted that taking into consideration the provisions of Section 172 (1) of the Code of Criminal Procedure, the applicant's conduct cannot be held to be a misconduct under Rule 11 of the 1980 Rules. The learned counsel further submits that Section 11 of the 1980 Rules concerns matters affecting administration where the police officer is restrained from making comments orally or in writing on the remarks made by the superior officer, whereas in this case the incident of noting certain comments made by witnesses against SHO Naraina came to be recorded by the delinquent officer during the course of investigation of a criminal case.

4. The second ground urged on behalf of the applicant is based on Rule 8(d) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Punishment Rules') relying on the judgement of the Tribunal in **Mange Ram Vs. Union of India & Ors.** (O.A. 1809/91), decided on 22.7.1993. Shri Shyam Babu, learned counsel, has submitted that the impugned punishment order by which the applicant's two years' approved service was permanently forfeited with proportionate reduction in his pay during which period he would not earn increments was

contrary to Rule 8(d) (ii) of the Punishment Rules, as both reduction in pay and (emphasis added) deferment of increment cannot be given in the same order. For this reason the learned counsel has submitted that the impugned punishment order should be quashed and set aside as they are contrary to law and rules.

5. The respondents have filed their reply and we have also heard Shri Ajesh Luthra, learned proxy counsel for the respondents. The learned counsel relies on the judgement of the Supreme Court in **Ram Kishan Vs. Bombay State** (AIR 1955 SC 104). He submits that the applicant was required to note down proceedings of investigation in the diary dealing with evidence. He submits that since the SHO PS Naraina was not involved in the offence, the applicant should not have noted down what the accused persons had mentioned about the SHO in his diary which was, therefore, contrary to Rule 11 of the 1980 Rules. He has also submitted that the accused persons who were DW-3 and DW-4 in the criminal court have not supported the applicant's version and he is prosecuting them in the criminal court and the case is still pending there. The respondents have submitted that the applicant had, therefore, recorded malicious accusations against the SHO which is not any information relevant to the crime under investigation. He has further contended that the applicant has been correctly punished after holding the inquiry by following the rules and the principles of natural justice. He has, therefore, submitted that in the circumstances of the case, the application may be dismissed.

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6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. The charge No.1 against the applicant was that while he was investigating the case, FIR No. 165/90 under Sections 7, 10 and 55 of the E.C. Act, PS Naraina, he had made certain remarks in the C.D. against the SHO Naraina which amounts to violation of Rule 11 of the 1980 Rules. Shri Shyam Babu, learned counsel, has also submitted that under the Punjab Police Rules (PPR) and Section 172(1) of the Code of Criminal Procedure, the police officer making an investigation is required to enter his proceedings of the investigation in a diary. As the applicant had admittedly been appointed as Investigating officer in the case FIR No. 165/90, he had to maintain a diary in which he had recorded the statements of certain witnesses for which he cannot be chargesheeted under Rule 11 of the 1980 Rules. The learned counsel for the respondents relying on Ram Kishan's case (supra) has submitted that the statements of witnesses are not to be recorded as part of the investigation but only that which relates to any evidence or property which is the subject matter of the investigation. That case, however, does not appear to be applicable to the facts in the instant case. The respondents have in their reply stated that paragraphs 15 and 17 of the case diary of the applicant show that he had recorded malicious accusations against the SHO which is not any information relevant to the crime under investigation. In the rejoinder filed by the applicant, he

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has denied these allegations. He has contended that there was no material available on record with regard to the framing of the charge.

8. Rule 11 of the 1980 Rules provides that a police officer shall not comment orally or in writing on the remarks made by a superior officer. In the present case, the charge against the applicant is that in the course of investigation of an FIR under the E.C. Act, he had made certain remarks in his diary against the SHO Naraina. It is apparent from the perusal of the charge that neither the remarks recorded in the diary against the SHO Naraina have been stated nor have they been stated in the summary of allegations. The Inquiry Officer in his report dated 11.11.1991 has stated that the applicant has not misinterpreted the ingredients of Section 172(1) Cr.P.C. He further states that the SI should have interrogated the accused persons at length to find out the source of supply of kerosene oil and places of disposal and other relevant material facts concerning the case instead of making remarks against the SHO/Naraina when he was not working under him. He has, therefore, concluded that "these remarks were impertinent to the case and effect the prosecution story adversely. It reflects the malafide intentions of defaulter S.I. and thus the charge to this effect stands proved". The disciplinary authority in his order has referred to the DE file, statement of witnesses, documents and findings of the Inquiry Officer but he has disallowed the applicant's contention that he has recorded in the case diary whatever the accused persons told him as not tenable. According to him what has been recorded in the case diary is not any information relevant to the crime

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but the malicious accusations against the SHO, which is a misconduct for which he was imposed the punishment. We are unable to agree with the conclusions arrived at by the Inquiry Officer and the disciplinary authority as to the reasons for recording of the information which was given to the applicant during the course of his investigation of FIR 165/90. The conclusions of the Inquiry Officer that the remarks made by the applicant in the diary regarding the SHO Naraina are impertinent to the case and effect the prosecution story are also untenable having regard to Section 172(1) of Code of Criminal Procedure. This section provides that every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed the investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation. Therefore, we are of the view that mere recording of what the accused persons said about the SHO Naraina in the case diary during the course of investigation would not amount to impertinent comments given by the accused officer in writing on the remarks or conduct of his superior officer so as to come under Rule 11 of the 1980 Rules. The disciplinary authority has come to the conclusion that what the applicant has recorded in his case diary is malicious accusations, which is a definite misconduct for which he cannot be absolved under any circumstances and the appellate authority has confirmed the punishment order on the ground that the act of the appellant is of malicious accusations on his superior officer reflecting his unbecoming conduct. On the other hand, in the facts of the

case, the contention of the applicant that in accordance with Section 172(1) Cr.P.C. and PPR 25.53, which requires the Investigating Officer to mention the facts which have come to his knowledge during investigation, is tenable as what he had recorded in the case diary was the remarks made by some other persons during the course of his investigation of FIR No. 165/90. In this view of the matter, the application is entitled to succeed. We may also add that Charge No. 1 is vague as the remarks in the C.D. have not been given, and on this ground also the punishment order is liable to be quashed. In the circumstances, we do not find it necessary to deal with the second contention raised on behalf of the applicant.

9. In the result, for the reasons given above, the impugned punishment order dated 28.1.1992 and the appellate order dated 8.2.1992 are quashed and set aside. The applicant shall be entitled to consequential benefits in accordance with law. The respondents shall take necessary action for release of the monetary benefits ~~shall be taken~~ ¹⁸ expeditiously, and in any case within two months from the date of receipt of a copy of this order.

O.A. is allowed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Adige
(S.R. Adige)
Vice Chairman (A)