

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(22)

O.A. No. 2393 of 1992

Decided on: 17.8.98

Shri Rajinder SinghApplicant(s)

(By Shri S.P. Sharma Advocate)

Versus

The Commissioner ofRespondent(s)
Police & Others
By Shri Anoop Bagai Advocate)

CORAM:

THE HON'BLE ~~SIXX~~ MRS. LAKSHMI SWAMINATHAN. MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter
or not?

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

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2393 of 1992

New Delhi this the 17th day of August, 1998

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

Shri Rajinder Singh
S/o Shri Sher Singh
R/o Village Badu Sarai,
Post Office Chhawla,
P.S. Najafgarh,
Delhi-110 071.

...Applicant

By Advocate Shri S.P. Sharma.

Versus

1. The Commissioner of Police,
Delhi Police Headquarters,
Indraprastha Estate,
New Delhi.
2. The Additional Commissioner of Police,
(Southern Range),
Delhi Police,
New Delhi.
3. The Deputy Commissioner of Police,
(South West District),
Delhi Police,
New Delhi.
4. The Additional Deputy Commissioner of Police,
(South West District),
Delhi Police,
New Delhi.

..Respondents

By Advocate Shri Anoop Bagai.

ORDER

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

Departmental proceedings were initiated against the applicant, a Head Constable in Delhi Police on the charge that he had picked one Krishan Kumar from the bus route 578 and arrested and detained him in case FIR No. 167 dated 24.5.90 under sections 25, 54 and 59 Arms Act and he had also received Rs.566/- in his personal search of the arrested person. He deposited only Rs.107/- but later on returned the difference of Rs.459/- balance to the complainant to hush up the matter and

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save him from allegations. The applicant was initially placed under suspension with effect from 10.7.90. The departmental proceedings ended in the disciplinary authority imposing a penalty of withholding of 2 increments for a period of 2 years without any cumulative effect and his suspension period was also treated as period not spent on duty. The appeal against this order also failed. Aggrieved by this, the applicant has filed this application praying for quashing of the orders of the disciplinary and appellate authorities.

2. The applicant contends that the disciplinary proceedings were initiated on the basis of the false complaint and the complainant himself was arrested by the applicant for the offences under the Arms Act. He also contends that he was suspended contrary to the provisions of the Delhi Police Act as well as against the principles of natural justice. He also alleges that there was no application of mind on the part of the concerned authority on the report of the preliminary enquiry to enquire into as to whether the same discloses any cognizable offence or not. The summary of allegations, Memo of evidence and charge-sheet were not in accordance with the complaint and preliminary enquiry report and it was not based on the allegation of the complainant. The applicant also contends that the enquiry was not conducted in accordance with the rules and procedure. The enquiry did not conclusively establish that the charges were proved. The Enquiry Officer had gone beyond the jurisdiction and scope of the enquiry as he had gone beyond the specific charges and, therefore, the enquiry was vitiated. He also contends that all the actions



have been taken under Section 21 including the framing of the charges and enquiry, whereas the same was not permissible under Section 21 and, therefore, the same are biased, mala fide, illegal and liable to be quashed being void ab initio.

3. In the counter-reply filed by the respondents, they have averred that the allegation of not depositing full personal goods including the purse containing Rs.566/- in malkhana, stood proved against the applicant. The Enquiry Officer also reached the conclusion that the conduct of the applicant remained shrouded with many doubts of which the charge of showing less amounts in the seizure memo was more grave and deserves major penalty for this act of misconduct. Therefore, the respondents justify the award of punishment by the disciplinary authority. They also have stated that the appellate authority had carefully gone through the appeal and rejected the same.

4. The learned counsel for the applicant argued on the pleadings and submitted that the enquiry did not substantially establish the charges but the Enquiry Officer had drawn his own conclusions and had returned the finding that the charges have been proved. The disciplinary and appellate authorities did not show any application of mind in passing the impugned orders. The counsel for the respondents, however, submitted that in disciplinary matters there is no scope for reappraisal of evidence by the Courts or Tribunals. In regard to the specific charge that the applicant had deposited only Rs.107/-

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out of Rs.566/- and that balance money was returned to the complainants, who did not produce any receipt. It was in these circumstances that the Enquiry Officer had raised a suspicion about this matter and had arrived at his findings.

5. We have given our anxious consideration to the contentions of the applicant and the averments of the respondents. We have also carefully gone through the findings of the Enquiry Officer.

6. The Courts and Tribunals do not sit in appeal against the order of the disciplinary or appellate authorities in disciplinary matters. At the same time, the Courts and Tribunals do ensure that there was some evidence which was established during the enquiry and the Enquiry Officer had not arrived at any perverse finding. After appraising the evidence of both the PWs and DWs, the Enquiry Officer recorded the following findings:-

" Considering all the facts on file (the statements of PWs, DWs and defence statement of defaulter and other relevant record leaving aside the PE record which is only a formal to bring the facts and to facilitate in deciding the matter reveals that none of the PW and complainant too could named or identified even justified their story on 23.5.90 on the following grounds against defaulter:-

A. None of them mentioned the name of HC Rajinder Singh, the defaulter for bringing the complainant from Chhawla Bus Stand getting down there from the bus.

B. None of the PW including complainant gave the exact figure of cash of Jama Talasi and other articles recovered from complainant by unknown Police HC and his colleagues.

C. None has witnessed about the handing over the transaction by the HC (who reportedly sought the complaint to PS) to defaulter.

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D. The statements made by complainant to become entrusted and false on the ground of the statements of DW 6 & 7 Ct. Jawahar Lal and Inspector Mahender Singh, the then SHO, who deposed that HC Rajinder Singh, the defaulter remained as night duty officer from 8 PM to 8 AM on 23/24.5.90 and did not leave the reporting room.

E. Vide D.D. No. 53-B at 9.15 P.M., the then SHO Inspector Mahender Singh further said that he personally checked the premises of PS, while came back from Patrolling and found no suspect no unauthorised person detained the PS premises.

This version is also seen by D.D. entries No.26A & 27A written by Inspector Kapoor Singh, SHO Dabri and ACP Shri Ziley Singh, who found the DO alert and present in reporting room during their night checking dated 23/24.5.90.

Considering these reports written by Inspector Mahender Singh, Kapoor Singh and ACP Shri Ziley Singh, the allegation levelled by complainant for torture of him also found baseless and corrected.

On the second point regarding the amount of Jama Talasi shown as Rs.107/- despite Rs.566/- is also found doubtful on the grounds that the complainant and his brother claimed that the balance of Rs.459/- was returned in presence of Inspector Vig. South/Shri Ved Prakash against a receipt issued by them by defaulter. Inspector Ved Prakash refused for this transactions. No receipt was produced by the complianant or his brother. Inspector Kapoor Singh also could't produce any solid ground in support of his findings in PE.

The allegations to detain the complainant became null and void. On the above mentioned grounds and the allegations of showing the less Jama Talasi also did not stood as correct. Because the complaint received his Jama Talasi and other articles from the PS without making any complaint to SHO Najaf Garh at that time and make this complaint afterwards which seems to be concocted 'after thought'. During the course of PE, the PW Shri D.S. Kataria, the brother of complainant agreed that he recorded all the statements of PWs with Inspector Kapoor Singh claimed that these statements were recorded by his Reader. These facts also decreased the strength/weight of the prosecution story as the EO Kapoor Singh took it very light the reason known to him. Considering the facts the story he should have examined the defaulter to avoid the time of seniors as during the course of such enquiry for the sake of fairness, the Government servant complaint against should normally be given one opportunity to say what he may have to say about the allegations against him to find out if he is in a position to give any satisfactory information or explanation which may render any further investigation unnecessary. He has not conducted any efforts to find out for the main defaulter who reportedly brought the complainant to PS and is main root cause to proceed this matter to prove also the exact amount handed over to defaulter if it happened".

7. Having recorded this, the Enquiry Officer concluded as follows:-

"Discussing all the matter mentioned above though the ingredients and contents of allegations could not be substantiated but the Code of Conduct Rules, 1964, could not be overlooked where the Government desire from his employee to maintain the integrity and devotion to duty all the time. It is, in fact, axiomatic that Government servant, especially those holding position of trust and responsibility should not only be honest in impartial to discharge of their official duties but also having the reputation of being so. Their behaviour gives no room for any possible suggestion to the contrary so those holding responsible posts to maintain independent and impartiality in the discharge of their duties. The defaulter HC having the independent investigating power arresting an accused in Arm case should also maintain the above status. Considering these facts of code of conduct the allegations levelled against the HC for this behaviour as well as in dealing can't be overlooked keeping the facts in mind the suspicion and probability arise in the dealing of HC and his behaviour which compelled the complainant and his brother to peruse this matter so long. To produce Sudan Singh as DW who according to PW D.S. Kataria informed him and demanded gratification on the behalf of HC for releasing the complainant but denied to be PW from fear of Local Police also create doubt and suspicion. So the allegations are proved."

8. From the above it is amply clear that while the Enquiry Officer had come to the conclusion that the allegations in the complaint against the applicant were not proved including the charge of depositing the lesser amount in the Malkhana, he proceeded to observe that though the ingredients and contents of all the allegations have not been substantiated, the applicant should have maintained the integrity and devotion to duty and returned the finding that the allegations are proved only on the basis of his own suspicion and surmises that the behaviour of the defaulter Head Constable gives rise to suspicion and probability of

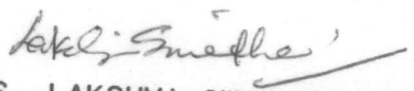
misconduct. The main ground on which the disciplinary authority has considered the findings of the Enquiry Officer was that the defaulter constable had deposited less amount as recovered by him. He observed in his order that the conduct of the Head Constable remains shrouded with many doubts on which the charge of showing less amount in the seizure memo is more pronounced. It was on this basis that he was awarded major penalty.

9. From the above, it is clear that though the charge has not been proved by way of any concrete evidence, the E.O. had returned a perverse finding merely on the basis of his own suspicion or surmise about the alleged misconduct of the applicant. It, therefore, cannot be said that the findings of the E.O. has been based on any evidence. We are inclined to hold that the findings of the EO taking into account his own observations and contrary to his own appraisal of the oral evidence of prosecution and defence witnesses cannot be said to be based on any evidence which supports the charge conclusively. We are unable to agree with the contention of the learned counsel for the respondents that just because the complainant did not produce the receipt of the returned amounts to them, the Enquiry Officer has concluded that the charge had been proved. The Enquiry Officer himself has shown above that even during the preliminary enquiry, the concerned defaulter could not produce any solid ground in support of his findings in this matter. Therefore, there is no evidence that has been thrown up in the enquiry to support the charge against the applicant. We are, therefore, of the view that the E.O. had returned the perverse findings without any

evidence. The disciplinary authority also had merely proceeded on the assumption that the conduct of the defaulter constable remains shrouded with many doubts of which the charge of showing less money in the seizure memo is more pronounced. Surely, this betrays total lack of application of mind on the part of the disciplinary authority. There is no evidence of any independent application of mind by the appellate authority also.

10. In the light of the above, we are of the considered view that the impugned orders cannot be sustained. Accordingly, these orders are quashed and the applicant is entitled to all the consequential benefits. The respondents are directed to take appropriate action in this regard within 2 months from the date of receipt of a copy of this order. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh