

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

15

O.A./T.A. No. 265/1992

Decided on: 03/06/97

Shri Raj SinghApplicant(s)

(By ~~SHRI~~ Mrs. Meera Chhibber Advocate)

Versus

Delhi Administration & OthersRespondent(s)

(By Shri S.K. Gupta, proxy counsel Advocate)
for Shri B., S. Gupta, Counsel for the
respondents

CORAM:

THE HON'BLE ~~SHRI~~ 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

(16)

O.A. No. 265 of 1992

New Delhi this the 3rd day of ~~May~~ June, 1997

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

Shri Raj Singh
S/o Shri Bed Ram,
R/o Village & P.O. Mandhoti,
P.S. Bahadurgarh,
District Rohtak (Haryana). ..Applicant

By Advocate Mrs. Meera Chhibber

Versus

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Shyamnath Marg,
Delhi.
2. Commissioner of Police,
Delhi Police Headquarter,
I.P. Estate,
New Delhi.
3. Additonal Commissioner of Police (AP),
Delhi,
Police Headquarter,
I.P. Estate,
Delhi.
4. Deputy Commissioner of Police,
9th Bn. DAP,
Pritampura Police Line,
Delhi. ...Respondents

Shri S.K. Gupta, proxy counsel for Shri B.S.
Gupta, Counsel for the respondents.

ORDER

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

Applicant, a Constable in the Delhi Police
was dismissed from service after a departmental
enquiry under Section 21 of the Delhi Police Act and

h

(14)

.2.

his appeal against this order and the revision petition thereafter failed. In this application, he agitates against the aforesaid orders of the disciplinary, appellate and revisional authorities and seeks to have the impugned orders quashed and also prays for reinstatement with other consequential benefits.

2. In order to have proper appraisal of this case, the facts are narrated as follows:

It is alleged that the applicant while being posted in 9th Bb. D.A.P. was detailed for V.V.I.P. duty on 28.12.1989 and he was issued one 303 bore rifle No.I Mark III along with 10 cartridges and ^{was} this accepted by him after proper receipt. Within a short time thereafter, the applicant reported that the rifle after its checking was found to be without a bolt and on his informing the Head Constable and the kot munshi, this fact was also brought to the knowledge of the SubInspector incharge of the route arrangement while the others in the troop left for the V.V.I.P. route duty. The Head Constable Sheodan Singh and the applicant searched for the bolt but in vain. He, therefore, lodged necessary report to this effect. Later on, a departmental enquiry was instituted against him and he was served with a summary of allegations which provided that the applicant after having been issued one 303 bore rifle along with 10 cartridges at S.No.20 of Arms and Ammunition Register of Kot Teen Murti Lines after his proper receipt. When he came back from

h

the route duty and told the Head Constable Sheodan Singh that the bolt of the rifle issued to him has been lost by him somewhere and the Head Constable made a thorough search but could not trace the missing bolt. For this act of grave misconduct, negligence, carelessness and dereliction in the discharge of his duties, he was informed that he would be dealt with departmentally under the Delhi Police Act. Thereafter, the enquiry was proceeded with and he was charged on the same grounds. After the enquiry, the Enquiry Officer concluded that the applicant received the rifle in a hurry as he had left for V.V.I.P. duty and, therefore, could not make proper checking of the rifle, and that the said rifle was not issued to anyone else for the previous 10 days and the applicant did not go out of the Teen Murti Police Lines after getting his rifle and ammunition and also that the Kot munshi and the H.C. Kot were also detained for temporary duty in the Kot and had not taken proper charge of the Kot and that the concerned Head Constable incharge of the Kot was on leave. The Enquiry Officer, however, found that it was the duty of the applicant to check his rifle when he took in his possession. Acting on the aforesaid enquiry, the disciplinary authority considered the finding that the Enquiry Officer which concluded that the charge against the officer stood proved. On going through the Enquiry Report and other documents on record, he held that it was established beyond doubt that the loss of bolt took

h

place when the rifle was in the possession of the defaulter and as he had ^{not} taken care of the weapon issued to him, he was found to be not fit to be retained in the Police Force and, therefore, the disciplinary authority passed the impugned order dismissing him from service. On his appeal, the appellate authority went through the various grounds of appeal, which were as follows:-

(i) That the applicant was in a hurry in getting the rifle and ammunition as he was assigned the V.V.I.P. duty and has to proceed immediately and, therefore, had omitted to check whether all the parts of the rifle were intact.

(2) That particular rifle has not been issued for duty for 10 days prior to the one it was issued to him and that some weapons in the Kot were not in serviceable condition and the Head Constable and Constable who were working in the Kot had not taken proper charge of the Kot and were working temporarily. The appellate authority, therefore, observed "by all this he is trying to prove that probably the bolt was missing from the rifle when it was issued to him from the Kot and his fault is limited to the fact that he did not notice it immediately". He further observed that "I am afraid this line of reasoning is not at all provide his case any strength. The policeman is trained in handling of rifle for nearly one year when he is under training and almost everyday of his training, all the drill is carried by him with his rifle. It

h

20

is the primary responsibility of every trained policemen to examine whenever any weapon is received by him to ensure that it is in proper working order and in case any such major part is missing like a bolt, the excuse of receiving that weapon in a hurry is no defence against act of gross negligence". He has also dismissed the ground raised by the applicant that the Committee under the provisions of P.P.R. 6.22, the procedure outlined was not followed in his case. According to this procedure, a Committee was to be constituted to make circumstances for the loss etc. The appellate authority discussing this ground concluded that the negligence of the appellant in losing the bolt is in no way effected by not forming the Committee as required under P.P.R. 6.22 and as per the above provisions, the Government servant responsible for loss of fire arms or ammunition is liable to pay for the same. He held that the aforesaid Committee will not determine the negligence of the man who lost the arms and ammunition and it is for that purpose, the departmental enquiry was the proper forum. The appellate authority also considered the ground of appeal, namely, that the punishment of dismissal was quite excessive and disproportionate to the alleged misconduct. This ground was also not accepted and, therefore, the appeal was rejected. The revision order passed by the next authority, namely, the respondent No.2 also ended in a similar rejection and his revision petition was

h

(21)

rejected by a reasoned and speaking order. The applicant has raised more or less the same grounds as he has raised before the appellate authority. The conclusion arrived by the disciplinary authority was not based on any evidence in the enquiry file and it was also perverse to the evidence on record. The applicant maintains that from the oral evidence on record, it was clear that the rifle remained unissued for 10 days. The arms and ammunition were under the charge of Kot incharge and the Kot munshi who were looking after the duty temporarily and, therefore, the conclusion of the Enquiry Officer that the rifle was issued to the applicant with the bolt, was not clearly established. In the light of this, the applicant contends that the conclusion in the impugned order that it has been established beyond doubt that the loss of bolt took place when the rifle was in possession of the defaulter was based on own conjectures and surmises and it was perverse to the evidence on record and, therefore, on this ground alone the impugned order is liable to be set aside. He alleges that there is total absence of any conclusive evidence that when the rifle when received by him was with the bolt and he has lost it after receiving it. In any case, this should have been examined by the Committee as required under P.P.R. 6.20. He also alleges that the Enquiry Officer tried to assume the role of prosecutor and judge and while crossexamining the defence

h

22

witnesses, he was also not provided any legal assistance to defend his case. He also contends that in similar case where a shortage of Magazine and bolt of rifle were detected to be missing on a surprise checking, the concerned officials were given minor punishment and, therefore, awarding of a major punishment of dismissal was very harsh and discriminatory. The appellate authority and the revisional authority have not applied their mind while disposing of his appeal and revision petition.

3. The respondents deny that there has been any failure on the part of the Kot in-charge at the time of issue of the rifle to the applicant. It is maintained that the rifle was issued to the applicant after proper checking and recording in the Kot Register and the receipt of the applicant was taken. The applicant reported about the missing of the bolt after 20 minutes and although a thorough search was made in the lines complex, the bolt could not be traced and, therefore, report to this effect was also made in the Teen Murti Police Lines. It is, however, not disputed that although the departure of the applicant was recorded, applicant did not join the route company due to the missing of the rifle bolt. The respondents maintain that it was the primary duty of the applicant to check the rifle when he took it in his possession and the respondents, therefore, found him guilty of negligence and carelessness and the applicant was dismissed after proper enquiry. They

h

23

also contend that the Committee provided under the rules is only for the purpose of recovering the cost of the arms ammunition and is not required to look into the negligence aspect. In this particular case, the negligence of the applicant had to be gone into in a departmental enquiry under the relevant provisions of the Delhi Police Act and, therefore, by not constituting a Committee in this case, there had been no violation of the principles of natural justice. The respondents also maintain that the disciplinary authority had imposed this punishment of dismissal which was quite commensurate with the gravity of misconduct as the loss of rifle or its part in possession of the applicant amounted to a grave negligence and carelessness which was suggestive of very casual attitude on the part of the applicant towards the maintenance of fire arms entrusted with his custody and this negligence rendered him unfit for retention in police service. His appeal and revision petition were rejected after careful consideration of all the facts and circumstances of the case.

4. The learned counsel for the applicant argued that the Enquiry Officer had not conclusively returned the finding that the charge had been proved. It was also argued that there was no evidence that it was the applicant who was responsible for the loss of bolt. His only failure was that he was negligent in checking the rifle when he took possession of the same and the charge

h

24

that the bolt of the rifle issued to him was lost by him was not established.

5. We have heard the learned counsel for the parties and have perused the records including the file relating to the departmental proceedings. The charge against the applicant was that the bolt of the rifle issued to him was lost by him and despite search in the lines complex, it could not be traced and, therefore, this act amounted to grave misconduct, negligence and carelessness in the discharge of his duties. We find that the Enquiry Officer had returned the following findings:-

"(i) The defaulter Ct. received his rifle in hurry as he was already late for VVIP route duty. So he could not make proper checking of rifle.

(ii) It also correct that the same rifle was not issued to anyone since last ten days from that day when rifle was issued to defaulter Ct. Raj Singh, No.10354/DAP.

(iii) Kot munshi and HC Kot were also detailed for temporary duty in Kot nobody took the proper charge of Kot as HC I/C Kot Kali Charan and Ct. Munshi Kot Lal Singh were on leave.

(iv) It is also correct that defaulter Ct. Raj Singh was not sent for duty and he remained in T.M. Lines after getting his ammunition and within 10 minutes it was in the knowledge of every one present there and defaulter Ct. Raj Singh did not went out of T.M. Lines.

(v) However, it was his duty to check his rifle when he took it in his possession".

From the foregoing, there is no clear finding that the bolt of the rifle was lost by the applicant. There was, however, some negligence on his part to

h

25

properly check his rifle when he took possession. The disciplinary authority, however, has not accepted this reasoning but he has also not given any rational explanation as to why such a finding could not be accepted from the facts and circumstances as brought out in the evidence. He has made certain general observations as follows:-

"I am afraid this line of reasoning is not at all provide his case any strength. The policeman is trained in handling of rifle for nearly one year when he is under training and almost everyday of his training, all the drill is carried out by him with a rifle. It is the primary responsibility of every trained policemen to examine whenever any weapon is received by him to ensure that it is in proper working order and in case any such major part is missing like a bolt, the excuse of receiving that weapon in a hurry is no defence against act of gross negligence".

The fact that the police constable was sent for VVIP duty and the rifle was received by him in a hurry, was confirmed by the Enquiry Officer. He had also accepted that the concerned rifle had not been issued for the last 10 days before it was issued to him. He had, however, held that the applicant had failed to properly check the rifle when he took possession. Failure to check the weapon before it was received and acknowledged, did not automatically or conclusively prove that the applicant was responsible for the loss of the bolt particularly when no such evidence was forthcoming in the enquiry. Therefore, it cannot be said that the charge of his having lost the bolt, is said to have been conclusively established in the enquiry.

h

26

6. We are no doubt conscious that in disciplinary proceedings the role of the Courts or Tribunals is very limited. It does not sit in appeal over the orders passed by the disciplinary authority, unless the charge itself is based on no evidence. In this case although the charge of negligence has been proved, the charge of the applicant having lost the bolt cannot be said to have been backed by any evidence. We find that the appellate authority also has merely repeated the same reasoning as was given by the disciplinary authority without finding ~~independently~~ whether the charge of the applicant having lost the bolt was proved in the enquiry or not. The review order also does not show any other reasoning in the matter. From the findings of the Enquiry Officer, we find that the part of the charge - that the applicant was responsible for the loss of the bolt of the rifle is based on no evidence. No doubt, the applicant was a Constable in

Delhi Police, which is a disciplined force where a higher degree of alertness in all matters is required. Even so, we are of the view that the punishment of dismissal from service for the negligence in checking the rifle properly before taking possession, appears to be too harsh and out of proportion, and which punishment according to the Delhi Police Rules is normally awarded for an act of 'grave misconduct' rendering him completely unfit

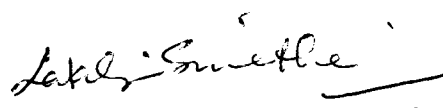
h

for the police force under Rule 8 of the Delhi Police (PUnishment and Appeal) Rules, 1980. In **Union of India Vs. Giriraj Sharma**, AIR 84 SC 5, the Apex Court had held that interference in the quantum of punishment could be justified if the punishment was harsh.

7. In the light of the facts and circumstances of the case and in the light of our observations, we are of the considered view that the impugned orders cannot be sustained and are accordingly set aside. The applicant may be reinstated in service forthwith. It is, however, open to the respondents to pass appropriate orders ^a fresh in the aforesaid departmental proceedings, in proportion to the charge of negligence which has been proved in the enquiry. We also provide that on his reinstatement, the applicant will not be entitled to any back wages.

8. The application is disposed of accordingly. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh

h