

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 34 of 1992

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New Delhi, dated this the 25th APRIL 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Raj Singh,
Constable No.1249/SD,
R/o Vill. Marodhi, P.O. Bamyani,
Dist. Rohtak
Haryana APPLICANT

By Advocate: Shri Shyam Babu

VERSUS

1. Delhi Administration
through the Lt. Governor,
Delhi.
 2. Commissioner of Police,
I.P. Estate,
New Delhi. ... RESPONDENTS
- By Advocate: Shri Raj Singh

J U D G M E N T

Hon'ble Mr. S.R. Adige, Member (A)

Applicant impugns the dismissal order dated 13.12.90 (Ann. A-6); the appellate order dated 4.4.91 (Ann. A-8) and the review order dated 1.11.91 (Ann. A-10) and prays for reinstatement with backwages along with full salary for the suspension period.

2. Both the applicant as well as ASI, Om Prakash were proceeded against departmentally, jointly on the allegation that applicant while posted at Police Post, Okhla had brought Veer Bhan, Ram Kumar, Om Prakash and others all residents of Village Sarai Julena Masih Garh, Okhla to the Police Post on 15.8.89 and beat them up in the presence of ASI, Om Prakash and demanded money from them, and released them only when they promised to pay money.

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3. Applicant as well as ASI, were suspended w.e.f. 29.9.89 and with prior approval of Addl. C.P. (Southern Range), New Delhi under Rule 15(2) D.P. (P&A) Rules conveyed vide order dated 9.2.90 regular departmental proceedings were ordered to be drawn up.

4. the E.O. in his report dated 16.10.90 (Ann. A-10) held the charge proved against both defaulters. A copy of the same was endorsed to applicant on 24.10.90 for submission/ representation if any against the findings, and he submitted his reply on 9.11.90. After considering the same, along with the other materials on record, and agreeing with the E.O.'s findings, the Disciplinary Authority issued the impugned dismissal order dated 13.12.90. Applicant's appeal (Ann. A-7) was rejected by impugned appellate order dated 4.4.91 and applicant's review petition (Ann. A-9) was rejected by impugned revision order dated 1.11.91.

5. Meanwhile Veer Bhan had also filed a criminal complaint before Metropolitan Magistrate, New Delhi (Ann. A-10), against one Subhash along with ASI, Om Prakash, applicant and S.I. Jai Singh in which it was alleged that at the instance of Subhash applicant took the complainant, Om Prakash and Ram Kumar to Police Post, Okhla into the presence of ASI, Om Prakash who accused them

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of having stolen money from Subhash and ordered Const. Raj Singh to remove their clothes who complied and then they were allegedly beaten with belts and 'danda' and were tortured till 3.00 p.m. that day. That complaint was dismissed by the following orders on 31.3.90.

" The complainant had not obtained by permission to prosecute the respondents Const. Raj Singh, ASI, Om Prakash and S.I. Jai Singh. Notification issued by L.G. of Delhi u/s 197 Cr. P.C. protects the respondents No.2 to 4. Without sanction to prosecute the respondents from L.G. of Delhi, the court is not called upon to take cognizance of the matter against respondents Const. Raj Singh, ASI Om Prakash and S.I. Jain Singh. Even otherwise the story as narrated by the complainant had other witnesses is inherently weak, unreliable and does not inspire confidence even to make any prima facie case against the respondents. Accordingly, cognizance is refused and the complaint is dismissed. File be consigned to record room."

6. The first ground ^{re}passed by applicant's counsel Shri Shyam Babu is that the medical certificates relied upon in the D.E. were not proved by the authors and hence are inadmissible in evidence. The medical certificates are on the letter pad of the AIIMS and the LNJP Hospital and disclose the nature of injuries suffered by Veer Bhan. There is not a single averment anywhere in the pleadings that the certificates are false, forged or fabricated, or that they were not signed by the Govt. doctors whose signatures are available upon them. It is true that the doctor who issued Medical Certificate No. 68377, LNJP Hospital though

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present in the D.E. refused to give any statement in the D.E. with reference to that certificate and PW-10 Dr. D.C.Khanna of LNJP Hospital did not submit himself to cross-examination, but when neither in his appeal nor in his revision petition has applicant cast any doubts on the veracity of these medical certificates, we have ^{no} reasons to doubt the same. In this connection it is well settled that the strict rules of evidence which govern criminal trials are not applicable to domestic inquiries. Furthermore applicant himself produced Dr. M.L. Gupta as DW-6 who examined both the MCs as per his evidence on record and who did not deny the existence of the injuries on the body of Veer Bhan. His testimony was mainly that the duration of the injuries had not been mentioned in either M.C. because of which it was difficult to determine how and by whom they were inflicted, but the E.O. has observed that this was the personal opinion of DW-6, and he had no reason to doubt the certificate given by PW-10 Dr. D.C.Khanna of LNJP Hospital. Hence this ground fails, and the rulings in 1990 (14) ATC 99 V.D.Joseph Vs. U.O.I. and 1993(1) SLJ 138 relied upon by Shri Shyam Babu do not help the applicant.

8. The next ground taken is that of discrimination. It is contended that while both applicant as well as ASI, Om Prakash were jointly proceeded against and both were found guilty of grave misconduct, ASI, Om Prakash has been given the light punishment

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of reinstatement followed by withholding of future increments for three years, ^{but} in applicant's case he has been dismissed from service. Support has been sought from the ruling in JT 1987 (4) SC 152. Respondents counsel has sought to justify the difference in the quantum of punishment by arguing on the ground that the actual blows and torture were inflicted by applicant, who thereupon merited a more severe punishment, while ASI, Om Prakash's culpability was limited only to the extent of being present at the time. This argument by itself may not be sufficient to justify such a light punishment being meted out to ASI, Om Prakash but as that individual is not before us we refrain from saying anything more in regard to his case, but in view of the grave nature of misconduct committed by applicant, the lack of severity of the punishment meted out to ASI, Om Prakash is no warrant to our interfering judicially with the punishment meted out to applicant. Hence this ground fails and in the particular facts and circumstances of this case, the judgment in JT 1987 (4) SC 152 does not help the applicant.

9. It has next been argued that of the PWs, these are interested witnesses and others have not supported the prosecution case. The question of sufficiency or otherwise of the evidence is not something within the jurisdiction of the Tribunal. As this is not a case of no evidence, this ground fails.

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10. It has next been urged that in the light of the dismissal of the criminal complaint by the M.M., New Delhi applicant cannot be punished in view of Rule 12 Delhi Police (P&A) Rules. That Rule refers to a situation where a police officer has been tried and acquitted by a criminal court after charges have been framed. While dismissing the criminal complaint filed by Veer Bhan, no charges had been framed, and applicant had not been tried; nor does the dismissal of that criminal complaint by order dated 31.3.90 amount to acquittal.

11. In the result the O.A. fails and is dismissed. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
Member (J)

/GK/

S. R. Adige

(S.R. ADIGE)
Member (A)